

Q. Harris

TITHES
POLITICALLY, JUDICIALLY,
AND
JUSTLY CONSIDERED.

TITLES

COLLECTED JUDICIALLY

AND

JUSTICE CONSIDERED

TITHES
POLITICALLY, JUDICIALLY,
AND
JUSTLY CONSIDERED.

ADDRESSED TO

The clergy of the university of Cambridge;

WITH STRICTURES UPON THE

FARNHAM HOP-BILL;

IN WHICH

THE NECESSITY OF A GENERAL COMMUTATION OF TITHES IS
DEMONSTRATED, MODES OF COMMUTATION ARE PROPOSED,
AND THE PROPER MEASURES POINTED OUT FOR OBTAINING
SUCH AS MAY MEET THE PUBLIC WILL.

By a PLURALIST. *K*

Quid verum atque decens, curo et rogo, et omnis in hoc sum.

HOR. I. Ep. v. II.

Plusquam boni mores valent, quam bonæ leges.

TACITUS.

LONDON:

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AND W. RAMSEY, BELL-YARD, TEMPLE-BAR.

1794.



DEDICATION.

TO
The Reverend, The Vice-Chancellor, The Heads of Houses,
and other clerical Members
 OF THE

UNIVERSITY OF CAMBRIDGE.

GENTLEMEN,

TO present the following sheets to you in the customary strain of servile adulation is not my design. For the subject of this work, when addressed to a national seminary of ecclesiastical knowledge and extensive patronage, there can be no real occasion to deprecate censure or to implore protection. My desire is to support the dignity of reason, which, in this instance, the usual meanness of dedication shall not degrade.

The evils, resulting from the present state of the church-revenue, have long demanded redress; and, when it is considered, that these evils not only affect the interests of a respectable and numerous class of the community, but involve many districts in perpetual animosity and litigation, it is greatly to be lamented that their remedy is yet to be sought. But,

DEDICATION.

as in the moral, so in the political state, reformation is more frequently the result of strong adversity than of active virtue. When local abuses multiply into national enormities, necessity compels the adoption of those expedients, which wisdom had long suggested.

That the complaints of the parochial clergy are too well founded will be seen in the following work, which, I am persuaded, includes a review of the origin and progress of such complaint sufficiently comprehensive and accurate to shew the propriety of a reform, and the necessity of legislative interference.

Such, and so frequent, of late, have been the judicial departures from former determinations,—such the self-contradictions, absurdities, oppressions, and impossibilities apparently authorized by executive justice,—such the jarring decisions of the different courts, respecting tithe-claims,—that the clergy scarce know how to demand their several dues, or on what to rest their respective rights, though originally issuing from royal charter, and repeatedly confirmed by the sanction of parliament.

But, in addition to these, what more peculiarly challenges immediate attention, and de-

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notes the present to be the proper moment of investigation and relief, is the alarming principle of a bill* now depending in parliament, which not only extends to the total abolition of tithes in kind, but that in a manner too partial and oppressive not to warrant the most serious remonstrance.

By this bill, it is intended to commute the increasing value of the best tithes, those which arise from articles of modern introduction, and therefore indisputable, for a fixed money-payment, which, from the rapid depreciation of specie, must in a few years greatly impoverish the clergy; while, on the other hand, it holds out no portion of recompence, no shadow of compensation.

That the principle of this bill is extremely dangerous, is further evinced by its exposing the clergy to new sources of oppression. After an incumbent has spent the best years of his life, and the whole of his private fortune, in litigating those moduses, which fall far short of supporting his family, and the great inequality between which and the real value of tithes in kind could alone justify legal contest; the parishioners, in case this bill passes, have only to apply to parliament, upon Mr. Pitt's

* The Farnham-hop-bill.

DEDICATION.

principle of—"enormous exaction,"—to supersede the decisions of equity, to annul perhaps the verdict of a jury, and once more reduce the harassed and impoverished claimant to a pecuniary modus.

If, to counterbalance these wrongs, the bill in question provided for the certain, full, and peaceable payment of all inferior tithes, it might prove less exceptionable to a large majority of the parish-priests, the most useful and the most numerous part of the clergy; but, far from removing, it is calculated to extend and perpetuate, the feuds and animosities in which these men are too generally and ruinously engaged; as, depriving the clergy of efficient tithes, must necessarily instigate legal inquiry into dormant claims.

Gentlemen,—to guard your particular rights, you depute representatives to the grand council of the nation:—and what so dear to the university as the future revenue of the national church? Yet, one of these delegates folds his arms in drowsy indifference, while the other becomes the strenuous supporter of a measure pregnant with the most annihilating consequences to that property, which it is his peculiar duty to protect!!

Alarmed

DEDICATION.

Alarmed at the introduction of such a measure, to whom can the clergy apply for assistance, able, and at the same time interested, to arrest its progress? To whom, but to *you*?—*you*, who in your collective body must soon feel the injury, which strikes at the individual patronage of your several societies??

To prevent the passing of the act in question would indeed be only a temporary escape from an assault, now pressing upon us in some shape from every quarter.—The bigot (it seems) *must* resign his fondled prejudices,—the bugbear *innovation must* surrender its fictitious terrors. The conduct of your deputies demonstrates the time to *be arrived*, when it no longer remains to the church to say that she is *entitled* to this or that mode of maintenance; she must meet the wishes of the people, must compound for the bread of peace,—happy, if she can ensure any decent support. It is an immediate and *general commutation of tithes* that alone can secure a certain provision for the church-establishment, can silence the clamors of the land-holders, and appease the complaints of the parochial clergy.

To you it belongs to exert that influence which appertains to the university, at least with respect to its own representatives, in
defence

DEDICATION.

defence and support of the ecclesiastical revenue.

Should it appear to you that I throw out little more than vague, crude, and imperfect modes of reforming the evils complained of,—you are requested to observe that I presume not to dictate, but merely to intimate;—pretend not to offer a specific plan, but endeavour only to awaken the legislature to a due idea of the wrongs of the church and of the real interests of the public.

Accept the testimony of an unbiassed individual;—of one, who has long fought the hard fights of equity, has combated in the cruel contests of law, and therefore speaks from fore experience;—of one, who, far from having an interest in what he advises, must unavoidably be an immediate sufferer from the adoption of his own suggestions;—of one, who writes not for himself, but for his order; and would think himself thrice happy in being the humble instrument of repressing those sorrows, which he has too sadly experienced.

The new and imminent danger, now impending, is supported by one of your own sons and confidential servants:—to your attention these sheets are therefore more immediately

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diately presented. Common sense forbids the idea that you can approve the wrong; common justice demands that you apply the remedy.

In firm reliance that your regard for the parochial clergy and your reverence for our pure religion will not permit you to remain neutral spectators of their ruin and its disgrace,

I have the honour to subscribe myself,

GENTLEMEN,

Your very humble brother

THE AUTHOR.

ADVERTISEMENT.

THE leading principles that pervade this work, and which it is hoped will be found strongly supported by argument, are principally these——

That all officers, civil and religious—viz. the clergy, as well as the officers of justice, those in the military, naval, and civil departments of the state, are alike servants of the public, and ought to be alike respectably maintained from the annual produce and industry of the people.

That the law of God commands his worship, which wisdom and policy also enjoin.

That, as in all duties, the injunction of the end necessarily includes the injunction of the means; it consequently follows that proper ministers, who can alone be the means of the regular and just performance of this duty, must be also commanded by the same law of God.

The author trusts that no want of candour will be imputed to his treatment of the professors of the law.—He deals not in common-place indiscriminate censure;—employs no acrimony on their conduct, unaccompanied by its justificatory particulars.—He writes not, for the little purpose of exposing the unprincipled practices of these men, but with the honest design of vindicating immortal justice.

The reader will observe, from the closeness of the letter and the general manner of printing these sheets,—very unusual in a work of this kind,—that their intention is to serve, not the writer, but the community;—their aim, not the purse, but the praise, of the public.

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ERRATA.

Page 3.—line 2. from bottom, for *For*, read *Nor*

- 9.—l. 11. for *a* r. *and the*
- 12.—l. 9. from bot. for *centuries* r. *latter centuries*
- 19.—l. 8. from bot. for *For* r. *Nor*
- 23.—l. 8. for *magistrial* r. *magisterial*
- 31.—l. 4. for *properties* r. *proprietors*
- 35.—l. 16. from bot. for *eventual* r. *conventual*
- 41.—l. 10. from bot. for *de novo*, *which* r. *de novo*. *Such*
- 43.—l. 18. for *What* r. *Wheat*
- 50.—l. 3. for *very* r. *are very*
- 59.—l. 6. for *port* r. *poor*
- 61.—Note.—l. 2. from bot. *so good dele so*
- 69.—l. 19. for *moduses* r. *modus*
- 70.—l. 12. for *can* r. *may*
- 74.—l. 21. for *for* r. *from*
- 76.—l. 10. from bot. for *meadow law* r. *meadow-land*
- 78.—l. 16. for *served* r. *sewered*
- 84.—l. 8. from bot. for 19l. r. *i. e.*
- 85.—l. 1. for — 8 G. *If* r. *Thus, if*
- 96.—l. 2. from bot. for *various* r. *serious*
- 104.—Note, bottom line, for *law* r. *bar*
- 108.—l. 17. for *finpecies* r. *single species*
- 108.—l. 18. for *entailment* r. *curtailment*
- 111.—Note, l. 4. from bot. for *Pebilers* r. *Schiefer's*
- 122.—l. 9. from bot. for *admissable* r. *admissible*
- 122.—l. 2. from bot. for *without* r. *with*
- 124.—l. 16. from bot. for *their* r. *other*
- 127.—l. 2. for *meditate* r. *mediate*
- 127.—l. 13. from bot. for *venice* r. *venue*
- 131.—l. 7. from bot. for *from* r. *form*
- 138.—Note, l. 3. from bot. for *forme* r. *forma*
- 139.—l. 16. for *are rewards* r. *are the rewards*
- 139.—l. 18. from bot. for *very footsteps* r. *every footstep*
- 145.—l. 9. for *indispensible* r. *indispensable*
- 145.—l. 9. from bot. for *than* r. *that*
- 151.—l. 2. from bot. *dele present*
- 166.—Note, l. 2. for *from* r. *form*
- 173.—l. 9. for *promissary* r. *promissory*
- 179.—l. 5. from bot. for *should allowed* r. *should be allowed*
- 180.—l. 13. for *have an equivalent* r. *have given an equivalent*

PROEMIAL ADDRESS

TO THE CLERGY:

SIRS,

STIMULATED by the new wrongs*, which threaten the clergy on one hand, and the old complaints of the laity on the other—I present to your notice, and to the attention of the public at large this volume. If I have an additional motive, it is, that the means of supporting the protestant priesthood may no longer be rendered a matter of contention, subversive of those very effects for which religion was ordained—"Peace on earth and good will to-wards man."

It has been my leading design, throughout the work, rather to argue from temporal, than spiritual motives; to establish the claims of the church upon the evidence of human reason and the political necessity of things; waving that *divine right*, with which

* The Farnham hop-bill &c.

PROEMIAL ADDRESS.

we contend the christian dispensation invests the christian priesthood. With you it is left to urge your wrongs and to solicit redress.

Our ecclesiastical establishment is the most prominent feature in the British constitution.—Most acknowledge the fact ;—few are attentive to its immediate deduction. Would we preserve the one in health, vigor, and beauty, the other must not be suffered to drop into decay or to acquire deformity. The clergy are the immediate servants of the crown.—Polity alone forbids that poverty should subject them to the contempt of the people. Time, inadvertency, and tyranny have conspired to divest you of your rights. The humanity of the age, the prudence of the state, and your own exertions may, if they procure you not a full compensation, at least restore to you reconciliation and peace with your respective parishes.

As servants of the state—divesting the order of its sacred dignity—you have a right, equally with its other servants, to expect a provision proportioned to your rank and service. But is this the case at present ? Are not your stipends most unreasonably less in proportion than those received by the most servile appendages

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dages of government? Is not that little frequently withheld by the greedy grasp of avarice, aided by the irresistible power of combination? Is it not, when paid, embittered by the contempt of the rich and the insult of the vulgar? Are not some of you, through the love of peace—others, through the pressure of poverty—daily relaxing in your rights? Does not modus rise upon modus, exemption upon exemption, and one claim of immunity only exist, till another is raised sufficient to cover it with something still more injurious? May you not then rationally expect, that the time will shortly arrive, when the hand of prescription shall have completely erased every record of your due, and left one universal blank against your demand?

Amidst this general injustice,—if you apply to a jury, your task is to combat invincible prejudice; if you appeal to equity, what is it but pursuing subterfuge and evasion through all the mazes of sophistry and litigation, at a ruinous expence? The one oppresses you with every wrong; the other denies you every right or relief. It is in vain to depend on *oaths* in the first instance, and on *justice* in the latter. Such is the general abhorrence of tithes, that both are equally regardless of their solemn engagements.

Jurors

PROEMIAL ADDRESS.

Jurors forget the evidence of fact, and courts of equity forego the inference of reason, whenever the claims of the church are the cause of complaint.

What then, Sirs, remains to you?—No other resource than an immediate application to the great fountain of justice—an address to the legislature; from whose well known integrity of conduct and liberality of sentiment, you have every reason to expect that remedy, which the peculiar hardships of your case demand.

Parliament alone is competent to the business and well informed on the subject. Many of the most distinguished members of both houses* have repeatedly acknowledged—that *something* ought to be done on behalf of the parochial clergy. But, can you expect redress, without application? Will the delicacy of parliament admit interference on your behalf in the first instance? Will the timid prudence of the present legislature venture embroiling itself in your affairs, unless yourselves first press the inquiry and implore the discussion.

It is not from your wrongs and oppressions being bandied about from one circle to another, the com-
mon-

PROEMIAL ADDRESS.

mon-place theme of momentary commiseration, that you can ever expect any general relief. It is alone from an earnest, manly, unequivocal statement of your injuries to the grand council of the nation, that you will ever obtain this universal essential desideratum. Convince parliament that you are unanimous in the request, moderate in the demand, instigated by a love of peace, and moved by the positive wretchedness of the greater part of your order—and leave the rest to its wisdom, its prudence, its humanity, and its justice.

Until this is done, you must continue to expect not only your rights to be disputed, your persons insulted, your property invaded, but even your sacred ministry to be treated with outward contempt. Sue for redress, and it will not be denied you: if you wait till it presents itself, your expectations will be fruitless.

It is vain to repine! you must either submit tamely to bear new hardships and insults, which almost every day produces, in addition to the already too numerous catalogue, or else, by one general appeal to the justice of your country, throw them from your shoulders for ever. Accompany the gentlemen of

* C

the

PROEMIAL ADDRESS.

the south-western counties in their meditated petition to parliament for an equitable commutation of tithes. This measure, evincing the liberality of the wealthy among you, would procure due attention to the complaints of the necessitous.

To you, my most oppressed brethren, who fill the subordinate stations of the church, I would advise an humble, but forcible recital of your numerous hardships, your flagrant disgrace, and your extreme poverty.

To you, who are possessed of benefices, I would recommend a candid statement of those frauds, litigations, and combinations against the church-revenue, which not only withhold your just dues, but frequently exhaust your temporal inheritances.

It is with confidence I address myself to the higher, the dignified, the ennobled part of my order—to those, whose good fortune, or whose illustrious talents have raised them above the miseries of the curate and the mortifications of the vicar.—To you, I need not urge the exertion of that influence and authority which you bear in our legislative councils, on behalf of the indigent and oppressed. It is your duty, as
fathers

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fathers of the church, as members of the supreme body of jurisprudence, as heads and protectors of that dispensation, which enjoins us to “do good unto all men, but especially to those who are of the household of faith.”

Such, Sirs, are the outlines of the plan recommended in the work now presented to your perusal—such are the means therein demonstrated as essentially necessary to effect its adoption—should it be deemed worthy of public regard.

It remains with you, the daily sufferers of the evils I deplore, and threatened objects of the wrongs I deprecate—as you feel its necessity, to urge its attainment.

I am,

SIRS,

With the most anxious and affectionate regard,

Your brother

THE AUTHOR.

PROBATION ADVICE

Having been found guilty of the offence of ...
it is the duty of the court to advise you of the ...
of the law and the consequences of disobedience ...
to the law and the consequences of disobedience ...

It is the duty of the court to advise you of the ...
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TITHES

Politically, judicially, and justly considered,

Æc. Æc.

CHAP. I.

The nature and great national importance of religion.—The necessity of religious instructors and their duty.—The present utility of the clergy and the further services they might be enabled to render the community, if liberally supported.—The injustice and impolicy of taxing the property of the church.

THE very nature of society implies religion, and acknowledges her sway as the basis of its foundation and support; for it is an axiom, evinced by the history of all ages of the world, that mankind cannot be governed without it, religion being as it were a part of the nature of man, and certainly his most distinguishing characteristic in the scale of creation: the wretch, therefore, who presumptuously assumes to have *no* religious faith, or to disclaim its duties, is an *avowed* enemy to *all* society, to every government; and even to his species. He, who dislikes any particular form of government, may find some state possessed of political principles adapted to please him, and may become a good citizen of that state; but the man, who opposes *all* religion, is alike the enemy of all government, and must necessarily be a bad citizen in all states.

Religion the
basis and sup-
port of society.

B

The

Tithes.

Importance of
ecclesiastical
establishments.

The promotion of religious knowledge is the foundation of moral practice: *hence* ecclesiastical establishments become of the utmost importance to a state, as neither private life can be happy, nor public welfare secure, without the individual observance of religious duties. Thus we find that history furnishes no example of an established civil society, without a provision for some religious establishment.

Governments
depend on
religion and
morality.

“On religion and morality (says Blackstone) all governments depend for support.” What are judicial oaths?—Where is the confidence in human veracity, upon which our property, and indeed our very existence depends, abstracted from the belief of a future state of rewards and punishments? Of what avail are human laws to regulate the conduct and secure the happiness of mankind, without a due sense of the Gospel? How little can be effected by legislation, where the people want a proper sense of religion; and how small are its contributions even to the most obvious improvements—to the advancement of manufactures, or the promotion of population!! Trade is supported by skill, as skill is acquired by labor; and it is one great property of our religion to excite men to diligence in their respective occupations. Population (the leading interest of every country) is best promoted by the controul of morals and inculcating the duties of religion. The moral doctrines of religion secure to us that internal peace, without which, the increase of population would be an evil, and the wealth of commerce a peril to its possessor.

Good morals the
parent of na-
tional happiness.

Good morals are the parents of national happiness and security. An absolute monarch, but the wisest of men, has observed, that “righteousness exalteth a nation:” and most true it is that, being the vital principle of public virtue, it forms the basis of true national glory. To this principle it was that Cicero attributed the preservation and prosperity of the Roman empire; and time evinced the wisdom of his remark, for Rome survived not the corruption of her

Rome an in-
stance.

her manners*. The welfare of all countries depends upon the morals of their people: for, although a nation may attain, by the success of their arms, the superior wisdom of their councils, or the acquisitions of commerce—the very summit of opulence and power; when their manners become depraved, they will insensibly decline: the great cement of virtue once dissolved, every step accelerates the rapidity of the descent. Such therefore, who have modelled governments for futurity, have endeavoured to propose methods, by which the riotous appetites and turbulent passions of the people might be bounded and restrained†. Private virtue is the only sure foundation of public happiness. For is it less so of national prosperity and wealth—that wealth, which

* The prevalence of manners over the laws in ancient Rome was long complained of, before the destruction of the Commonwealth. See Plin. Nat. Hist. 36—3.

Plautus—Irrinummus, Act. IV.

Experience has ever shewn that manners, as they degenerate, will at last prevail against all human laws and ordinances. See Montesquieu 4. 1—and Plutarch in his Life of Numa. It is a mistaken supposition, that laws are sufficient to controul and govern manners. The very reverse is the truth. By 2d Geo. II. common swearing is forbidden, and the delinquent is fined according to his rank; but is the practice suppressed, or at all curbed? Nay, is this act possible to be enforced at this day? He, who attempted it, would be laughed at; and if he persevered, too probably butchered. He would indeed have Law and Gospel on his side, but *leges moribus serviunt*.

By an ordinance in 1650, it was made felony in both sexes to commit adultery or fornication; but laws, to controul manners, repeal themselves.

The acts relating to Alehouse-tipling, duelling, gaming, and those made to prevent bribery and corruption at elections, all admit the same reasoning, and stand in proof of the position—that manners will always prevail against laws.

Mandeville was abused for writing a book to shew—THAT PRIVATE VICES WERE PUBLIC BENEFITS, (*i. e.*) that a corruption of manners, though pernicious to individuals, were yet serviceable to the state. Are they not made so in the instances of lotteries, liquor-shops, &c. &c.?

† Davenant, 11—41.

Lithes.

is the happy consequence of industry and skill, whose active powers combined with the principles of morality and justice, can alone inspire and preserve confidence—that confidence, which is the soul of commerce, and the sure source of public, as well as individual welfare.

Position on which the claims of the clergy rest.

Here then is the position upon which I would rest the claims of the clergy to the peculiar protection of the legislature! *Audi, quo rem deducam!!—Religion is the first and firmest foundation of human society.* This has been admitted by the greatest characters of all ages; has been the constant maxim of all great legislators, from the earliest to the present times.

Plato's sentiments on the education of youth.

Plato employs much of the fourth dialogue of his *De republica*, to shew that the security of states depends upon the education of their youth, stating it as almost alone sufficient to supply the place of both legislation and administration.

Zaleucus, the Locrian legislator, made it his first care to impress the people with a sense of a Deity, omniscient and omnipresent, rewarding or punishing the actions of men. These sages were heathens, yet imagined that men would be better subjects for being moral and religious.

The wisest laws effect little with religion.

Modern politicians may vainly boast their imaginary superiority of policy and wisdom; but little, alas! is left for the schemes of the wisest to effect, without the influence of morals and religion! The most forward in the race of ambition stand prominent on the canvass of history, not as the friends, but the scourge of mankind; whereas, the power of the Gospel is adequate to the purpose of governing the world, by the divine precepts it inculcates, conveyed in the zephyr-breath of wisdom and moderation.

Poland.

In Poland, every thing favours the security of robbery and murder; yet such are the morals of its people, that these crimes are very rarely committed,

So much more useful are good morals than even good laws*.

During the first three years of the American contest, many of the colonies had no established governments: and yet, persons were as safe, properties as secure, as in any part of Europe. The truth is that man (comparatively speaking) owes little to what is called government. From civilization and instruction arise his best enjoyments. The general interests of social life naturally conduct him to order and harmony. The mutual dependance of man upon man will of itself give birth to the regulations and usages necessary to his happiness. To this we are indebted for our common law, which is little more than the law of nature.

Xenophon observes that other legislators directed punishments for crimes committed, but that the Spartans inspired their youth with a love of virtue and an abhorrence of vice, which prevented the commission of crimes.

Observation of
Xenophon.

Civil polity extends only to public offences; while private crimes, though equally injurious to society, elude its censure. Civil polity has for its object the punishment, religion the prevention of crimes. One punishes the actions of intemperate appetite; the other moderates and subdues the passions themselves. The utmost effect of human laws extends no further than to push vice into the shade, and necessitate concealment; whereas, the influence of religion urges the very inmost thoughts, and not only restrains the act, but reforms the man.

Religion is the strongest bond and cement of society, the surest and steadiest protector of human security. Human institutions reach no further than to general duties, in which the collective welfare of society is more particularly concerned; all the rest

* Inod. Univ. Hist. 43. 529. More states have perished because the people violated morals, than because they broke the laws. Grand, et Decad. des Rom. 96.

The very errors of religion beneficial to man. (and much it is) that is necessary for the ease and happiness of social intercourse, can be derived only from the sources of religion. Even those errors of religion, which first peopled the world with false divinities, were not without a degree of benefit to mankind.

An ingenious modern author observes that—
 “nothing could less plead the sanction of reason than the general rights of Pagan worship. Weak and absurd, however, as they were in themselves, and indeed in the estimation too of all the wiser sort, yet the more thinking and judicious part, both of their statesmen and philosophers (says he) unanimously concurred in supporting them, as sacred and inviolable; well persuaded, no doubt, that religion is the strongest cement in the great structure of moral governments *.”

Pagan worship.

Thus is religion the most powerful auxiliary of civil polity; and hence the necessary connection, or, (as Warburton calls it) *alliance*, which must ever subsist between church and state.

Superiority of christianity to paganism.

If then such were the services of the Pagan scheme of moral duty, how much more are we indebted to the perfections of Christianity!

The Pagan scheme was vague in its reasonings, dubious in its inferences, dark and deficient in its encouragements; amusing the speculative, without informing the ignorant; entertaining the head, without affecting the heart. Their very precepts were imperfect; were far more indebted to the neatness of language that prescribed them, than to any real wisdom they inculcated. Their practice was yet more impure; the refinements of philosophy in vain contending with the prejudices of the people.

Christianity indulges no vice, &c.

Christianity extends indulgence to no vice, socially or individually injurious to man: it lays claim to every virtue, that can exalt his honor or promote his interest. Vice is not only condemned by it, but all

* Fitz. Oss. Lett. 46:

Tithes.

7

the avenues are guarded, by which it gains access to the human heart.

By the Christian dispensation, the wrath of God is revealed from heaven against *all* unrighteousness. The severe penal consequences of offence, as well as the high rewards of obedience, are respectively urged; motives, that must operate far more strictly on the human passions, and of course enforce the practice of moral duties far more emphatically, than the feeble, and generally fallacious, reasonings of even the best of the Pagan writers.

Christianity peculiarly enforces moral duties.

Take away the virtues *peculiarly* Christian, which too often appear of little value in the minds of the unthinking;—withdraw patience, forbearance, meekness, brotherly love, temperance, and chastity—and what a savage scene would society exhibit!! These removed, there remains nothing respectable or amiable in the human character. Subtract these, and there exists no longer peace, comfort, good faith, or good order among men.

Christianity renders men respectable.

There is not a single ordinance in the whole Christian scheme, the neglect of which will not, some way or other, prove injurious to the happiness of individuals or the interests of society. On the other hand, a steady adherence to the duties it enjoins, unerringly conducts both the individual and social capacity of man to its utmost perfection*.

Buffon, speaking of the natives of Brasil, tells us—
“those in the inland places are still for the most part
“absolute savages; nor was it by force that any of
“them became polished. In those barbarous nations
“the manners were rather formed by the Gospel missionaries, than by the victorious arms of the princes
“by whom they were subdued. In this method

The Brazilians desirous to be instructed in Christianity.

* The scriptures, it has been well remarked, though often perverted to purposes of tyranny, are yet in their own nature calculated to preserve the civil and religious liberties of mankind. True religion, virtue, and liberty are more intimately connected than is commonly imagined.

Bishop Newton on Isaiah.

“Paraguay

Tithes.

“ Paraguay was entirely civilized. The mildness, the
 “ good example, the charitable and virtuous conduct
 “ of the missionaries touched the hearts of its savages,
 “ and triumphed over their distrust and their ferocity.
 “ Often have they, of themselves, desired to be made
 “ acquainted with that law, which rendered men so
 “ perfectly masters of their unruly passions and appe-
 “ tites; submitted to its influence, and united in so-
 “ ciety. Nothing surely can reflect greater honor on
 “ religion, nothing more irrefragably prove its influ-
 “ ence over the minds of men, and of course the in-
 “ estimable advantage of which its teachers are to a
 “ state, than the circumstance of its having thus civi-
 “ lized these nations, and laid the foundation of an
 “ empire without any arms than those of virtue.”

Upon the support of Christianity, as the religion of our country, even abstracted from the intrinsic truth of its divine origin, depends almost all temporal security.

It was well observed by a late noble writer that
 “ our church and state (he might have said any Chris-
 “ tian state and its church) form but one system; what-
 “ ever hurts the church, hurts the state; whatever
 “ weakens the credit of the governors of the church,
 “ takes away from the civil power a part of its strength,
 “ and shakes the whole constitution *.”

Our religious
 establishment
 unites the jar-
 ring interests of
 mankind.

Of such political moment is a peculiar religious es-
 tablishment, even in this enlightened æra, that it
 unites in one social compact all the jarring opinions of
 mankind; and by legislative authority, we are at this
 instant, Episcopalians in England, Presbyterians in
 Scotland, and Catholics in Canada; that appoint-
 ment prevailing, which is found most conducive to
 the peace and prosperity of the respective parts of the
 British empire.

The necessity of
 the Christian es-
 tablishment ac-
 knowledged as
 furnishing a
 compleat system
 of ethics, &c.

But still the necessity of a Christian establishment is
 universally acknowledged; as furnishing a system of
 ethics, wisely calculated to check the unruly passions,

* Lord Lyttleton's speech on the Jew Bill in 1753.

to correct the depravities, and mitigate the miseries of human nature; a system of ethics, the purity and perfection of which was wholly unknown to preceding ages, the practice of which at the same time improves the nature of man and promotes his present felicity.

When we observe the wide waste that has been brought upon the world, by the follies and cruelties of bigotry and superstition; when we see the most fertile quarter of the globe now barren and desolate, a wretched remnant of its inhabitants reduced to a state of barbarism; we must surely conclude that, were our views confined to present existence, even temporal happiness is greatly dependent upon religious instructors; and that it is no mean part of the politics of any country, to defend the people against false teachers, who broach doctrines destructive to the security and welfare of mankind. And how is this to be accomplished?—not by merely preventing the diffusion of false principles, but by shewing the true; not by casual references to those principles, but by constantly enforcing the necessity of observing them, which can only be effected by the appointment and support of an order of men adequate to these great purposes. Hence the necessity of the priesthood—an office, which, whether we consider its institution as from God, or the momentous nature of the things of which it treats, is the most dignified and honorable, “ordained of men in things pertaining to God;”—an office in its own nature the most exalted, and in its effects the most beneficial to mankind.

Necessity of religious instructors.

In this light our legislature evidently considers it, by prohibiting its connection with all inferior employments, lest it should be disgraced by an improper attention to temporal concerns. It is indeed requisite that the clergy should wholly resign themselves to the great and important duties of their undertaking, and manifest that the due execution of these ill admits the interference of active life.

Importance of the priestly office.

C

Fully

Deprived of the
benefits of active
life.

Fully sensible that temporal cares are directly adverse to the exercise of the sacred function, not only the legislature of our own country has exerted itself, but many canons have been made in all Christian churches to prevent the clergy growing secular.

The duty of the
people to provide
for the clergy.

If then they are to employ *all* their thoughts and industry in the great work of promoting the salvation of mankind, totally unconnected with worldly concerns, it is surely the duty of the people, on every principle of gratitude and justice, to provide them a decent and respectable competency.

The justice of this claim is self-evident ;—" the labourer is worthy of his hire." Nor ought the principle of gratitude to operate less forcibly ; for, if they divest themselves of all other employments, by entering upon the work of the ministry, the sacrifice of temporal benefit is as great as it is obvious.—It is, besides, the interest of the laity to disengage the clergy from all worldly embarrassments, that they may be the better enabled to discharge the momentous duties of their function. How much the good of mankind depends upon an holy, zealous, and active priesthood, is alike evident from history, sacred and profane.

Independence
necessary to the
clergy.

Can the priest be supposed to instruct and exhort his people with due reverence and resolution, to reprove their errors and rebuke their vices, whose very precarious and parsimonious support cramps and confounds his mind, and, it is feared, too often restrains his utterance? Can *he* " lift up his voice like a trumpet, and shew the people their transgressions,*" who is in fear of disobliging those, upon whose uncertain kindness his family depends for subsistence?

It is contended by some that the maintenance of the ministers in the Christian church was left by our Saviour himself free and voluntary, and ought accordingly to depend upon the unconstrained munificence of the people. By others an appropriate revenue for the subsistence of religious officers is deemed an anti-

* Mai. lviii. 1.

christian yoke, and the sacred plea of conscience is alledged in bar to a divine appointment, merely because it is supported by the hand of civil authority *. From hence we discover what a broken reed of security we should have to lean upon in a voluntary benevolence. Did indeed the zeal of primitive Christianity still exist, we might acquiesce with security; but the fact being so much otherwise, the protection of civil government has wisely interposed to ascertain and secure the observation of this precept, and thereby given a public sanction to the obligation of Christian commands.

The zeal of the primitive Christians.

Were the practice of supporting the clergy by voluntary subscription once established, preaching would soon become a mere solicitation for alms; the clergy would be degraded to a race of mendicants; the dignity of the divine character would be lost in the anxious yet necessary solicitude arising from precarious income. Left to the mercy of his auditors for the means of support, the minister of heaven must fashion his doctrine to their will, regulate his conduct by their notions, and become the slave of their caprice. Instead of chiding their errors, he must condescend to flatter their crimes, and, lost to all the dignity of his sacred office, submitting to the tyranny of vice, must tamely behold every depravation of character, without daring to reprove it by precept, or shame it by example.

Legal support of the clergy necessary.

The consequence is obvious. The native independence of a virtuous heart revolts at such an humiliating situation. The ministry, thus degraded, would fall into the lowest hands; and worth, piety, and learning be banished from the profession.

Further reasons evincing this necessity.

* The parochial and expectant clergy amount to eighteen or twenty thousand, and their stipends do not average more than 40l. a year. The attorneys amounting to thirty thousand, enjoy incomes averaging 300l. a year.

The first are essential to the happiness of the people; the latter are a grievous burden. The first are the preachers of peace; the latter the authors of strife and litigation.

Tithes.

A legal provision for the national clergy, compulsory upon those who are to contribute to it, seems therefore indispensable.

Unless it can be proved that the clergy, as an order, are useless in the state; unless all the legal restrictions, which prevent them from engaging in other lucrative employments be repealed; it must be granted that they ought to derive a certain, not a precarious maintenance, from the holy, and, it may be truly added, anxious and arduous employment to which they are appointed. It is folly to talk of a general voluntary support of the priesthood: the liberal few might perhaps contribute more largely than equity would demand; but far the greater number would bestow nothing at all. No reliance could therefore be rested on this as a general support. The churches would be depopulated; religious duties would be forgotten: the avaricious would save their money—the indolent their sloth; the profane would shun the threatenings of the Gospel, and the infidel avoid those arguments, which he is unable to combat. A general disregard and contempt of all religion would ensue, and in a very short time mankind would revert to that state of doubt and darkness, in which Christianity found them.

Consequences to religion if otherwise.

The national services, resulting from the labors of the clergy, should not here be forgotten.

Learning indebted to the clergy.

With respect to science and erudition, the whole world is under everlasting obligation to the clergy of this country, particularly for those sparks of learning, which were the only ray that remained to enlighten centuries, and prevented the relicks of literature from falling into one general abyss of darkness. “Our language (says an eminent writer) has, from the reformation to the present time, been chiefly dignified and adorned by the works of our divines; who, considered as commentators, controvertists, or preachers, have undoubtedly left all other nations far behind them. No vulgar language can boast such treasures of theological knowledge, or such

The superior number and value of their writings.

“ such multitudes of authors, at once learned, elegant, and pious. Other countries and other communions have authors perhaps equal in abilities and diligence to ours; but, uniting number with excellence, there is certainly no nation which must not allow the pre-eminent superiority to the english clergy.

“ Of morality little is necessary to be said, because it is comprehended in practical divinity, and is perhaps better taught in english sermons, than in any other books, ancient or modern, nor is it necessary to dwell on their excellence in metaphysical speculations, because he that reads the works of our divines will easily discover how far human subtilty has been able to penetrate *.”

Such then being the services rendered by the clergy to the state—such the indispensable necessity for a continuance of those services—such the authorities in their favour—surely the teachers of religion deserve something from a government, the order of which they so materially contribute to maintain! And what are their claims? surely not more than they deserve—
“ the protection of government in their just rights; and they who deny them that, are themselves persecutors, disturbers of government, and very bad members of the commonwealth †! !”

They desire only to be protected in their just rights.

All civilized nations have been uniform in this particular—the manifestation of their reverence and gratitude to the Deity, by providing honorably and liberally for the maintenance of the ministers of religion. We observe that amongst the Jews, the constant practice was, that “ they which ministered about holy things, lived of the things of the temple:” and this was transferred by the appointment of our Lord into the constitution of the Christian law. If then we call ourselves CHRIST’S, surely the command of CHRIST deserves our confi-

All nations provide for their clergy.

* Johnson’s Idler. No. 91.
† Persian Letters. 65.

The Jews.

Scriptural
Injunctions.Sentiments of
Lord Bacon.The clergy
abandon all
secular concerns
and all means of
support, there-
fore &c.Hardships of
the clergy.

deration and compliance. St. Paul tells us, that "the Lord ordained that they which preach the Gospel, should live of the Gospel." In whatever light this injunction is considered, (whether as a discharge to the ministers of CHRIST from the care and anxiety of secular employments, that they may "attend upon the Lord without distraction," or as a demand upon the people to make provision for them in a way most suitable to their function;) it is undoubtedly a command indispensable in its nature, that they, who preach the Gospel, should receive from those to whom they minister, an equitable portion of temporal good things. Thus the great Lord Bacon declares it a constitution of the divine law, from which human laws cannot derogate, that those who *serve at the altar* should *live of the altar*, that those who *dispense spiritual things*, should *reap temporal things*, in a proportion not small or necessitous, but plentiful and liberal*: nor can any thing be more reasonable; for if human nature be the same, and the general exigencies of life the same, what reason can be urged why an office of the highest and most important concern should reduce a man to the most miserable condition of human life, without the liberty of his own hands to labour for his own support, or any security for the payment of his just dues from others? Singular and unjust are the hardships of the English clergy in the instance alluded to; bound in legal manacles, fettered with partial restrictions, they are denied the fair privilege of availing themselves of the advantages of life, common to every other description of men, and are frequently, with large families, thrown upon the churlish bounty of those, who, far from feeling a generous emotion of compassion for their hard circumstances, or any reverence for their talents, learning, or sacred employment, will study every artifice to rob them of that slender

* 1 Cor. ix. 14.

Bacon's Resuscitation. p. 189.

stipend,

stipend, which in ancient and better times was liberal and ample, but which, by fraud on one side, with inadvertency and poverty on the other, is in these days reduced to a wretched pittance, totally incompetent to their support.

By Stat. 21. Hen. VIII. cap. 13. Clergymen are forbidden to take any lands or tenements to farm, upon pain of 10l. per month, and total avoidance of the lease: and upon like pain to keep any tanhouse or brewhouse; or engage in any manner of trade, or sell any merchandise, under forfeiture of the treble value. Under this prohibition (which is indeed strictly consonant to canon law) the clergy being excluded from all secular concerns, can the most rigid justice, with any colour of consistency, vindicate the present too prevalent practice of compelling them either to forego *their only means of support*, or enter into the most distressing litigations with their parishioners,—thereby neglecting their sacred duties to attend the courts of law; and, in instances, where this may not happen, to abstract themselves more from their holy employment, in collecting their dues, than they would in conducting the most extensive manufactory in the kingdom.

The clergy are, it is true, thus *necessarily* restricted, the qualifications requisite for the due discharge of their sacred office demanding all their attention. The fundamental evidences of the faith are so dependant upon customs and institutions that no longer exist, so interwoven with the history of a very peculiar people, and so involved in the obscurities of languages, at this time but little known, except to the clergy—that they point out the necessity of an appropriate education, and of affording a life of leisure to particular persons, in order to perpetuate such important erudition.

These restrictions necessary.

It can hardly be doubted, but that the very records and interpretations of christianity would long since have been lost to us, without an order of men, whose education is directed to this particular.

The life of the clergy solely devoted to learning and their duty.

The records of Christianity would long since have been lost without them.

And yet this very order has long been apparently deemed by the people both burdensome and useless; and

Tithes.

and considered as persons idly fattening upon the industry of others. But surely a little reflection will do away this charge.

The clergy labour as much as any other order of men

The clergy (it is said) do not labour—and “if any man will not work, why should he eat?” Certainly he, who takes no useful part in the interests of society, has no claim upon the benefits, derived from it: but *how* is *this* the case with our clergy? Because they do not toil in the field and take up the pickaxe and the spade, the ignorant the selfish and unthinking, conceive them to be drones in society. Fully sensible that an argument which is popular ought not to be despised, because it is weak,—to this idle, unfounded charge, *this* is their reply—

Intellectual labour equally hard as bodily exertions.

It is for the public good alone that all orders of the community, ought to have their respective establishments, and the public mind should be convinced of their necessity.—Is not intellectual labor adequate to corporal exertion? Does not the active energy of the mind, run parallel with the exercise of the body? and, judging by *comparison*, (the only fair way of forming an estimate) do not the parochial clergy perform as much, or more, for their miserable stipends, as the physician or the lawyer, for their enormous perquisites and boundless fees? Yet these are satisfied without a murmur!

The intellectual exertions of the clergy.

May not he, be most emphatically stiled a laborer, who is incessantly employed in the cultivation of the human mind, improving and enlarging its powers, calling forth its most active energies in the cause of virtue, alternately pointing out the way to great and good actions, or divesting its propensity to bad ones! These unmanly accusers and illiberal revilers are themselves the drones of society; *to them* are imputable

Lay impropriators.

the vices they condemn in others!—*The lay impropriators!* those sleek and pampered sons of opulence and ease, who fatten on the spoils of the church and embezzle those emoluments of office, which they have the avarice and sacrilege to steal, but want both talents and industry to earn. These are the drones of society!

society! *and in this order of beings*, are chiefly to be found the enemies of the clergy; men envious of their virtues and accomplishments and meanly jealous of the scanty pittance, gained by the most laborious exercise of them.

As moral philosophers, the english clergy stand unrivalled, and their important and numerous services daily rendered to the community can scarcely be appreciated!

The clergy considered as moral philosophers.

That species of labor which demands superior erudition, ought in justice to be followed by superior rewards.—Try them by *that* rule!!!

Even Voltaire considered the british clergy as objects of national exultation! yet how many of them (disgraceful to relate!) are suffered to exist in a state of the meanest indigence!

Voltaire's sentiments of the clergy.

To the clergy we principally stand indebted for the blessings of the glorious revolution.—They contributed, by their animated excellent writings against arbitrary power and popish superstition, more than any other order of men, to the accomplishment of that happy event.—To the clergy we are indebted for the depths of philosophical research—The clergy preside over the education of our youth—They enlarge the bounds of human knowledge, embellish every moral truth and stimulate the people to virtue.

Instrumental in the revolution.

And!—What (it is asked) is their recompence? *How!* has government guaranteed to them public favor or esteem? *How!* but by a measure at once *oppressive* and *ridiculous*.—(viz.) by taxing them—The measure is *oppressive*, because their very reduced incomes are altogether inadequate to such contributions, and they are without possible means of increasing them; *ridiculous*, as being a tax upon a tax,—a tax on the donation of the legislature itself.

Their illiberal recompence.

Impolicy of taxing them.

In other countries the lands of the church are held sacred: and the public opinion respecting the property of our own clergy may yet be traced

In other countries and in this country in other times the property of the church held sacred.

in the foundation-charters of our ancient monasteries *.

Origin of taxing
tithes.

The taxing of tithes had its origin from the observation, that the most valuable of them were become the property of laymen, of men who soon ceased to regard the wants of the numerous poor, that had hitherto been supported singly from that source †. And thus far it was justly imposed. The clergy were not at first thought proper objects of taxation; but, not being separately represented in the commons, and in the other house, the bishops, either through indolence or fear of public clamor, disregarding the general terms of the statutes, while the tax-gatherers were happy in an opportunity of taking a peculiar part in the popular oppressions of the church, taxation was extended to the poor pittance of the parish-priest—to that class of the clergy which can very ill afford it—to those who are themselves at the door of a workhouse—who are comparatively poorer than the poor they are required to support—who are indeed sunk so low in the gulph of poverty, as to be very often obliged to apply to the meltings of humanity for a maintenance, through the channel of a daily publication.

The poverty of
the clergy
makes them im-
proper objects
of taxation.

* In Persia, the lands of the clergy are held sacred and never taxed or confiscated.

The Grand Signior has no controul in matters of religion. How sacred the property of the church was deemed in this country may be seen in our old records of church-lands. See the Law of Ethelwolf's, passed in 855, by which, with the consent of his subjects, he granted tithes, *free of taxation*, from the whole realm.

† The depraved policy of the present day is to consider revenue as the first great public good. Even individual misery is made a source of temporary political welfare; such welfare, however, is only a delusive shadow.

Intoxication and gaming are tacitly encouraged by government, *as tending to encrease the revenue*. The consumption of spirituous liquors, though it slays millions at home, helps to support those wars abroad which unhappily ambition has sometimes rendered politically necessary. Knox's Essays.

In defiance of all ancient custom, of justice, of reason, of religion and the common honest sensibilities of man there are at this time very many vicars, with large families, whose preferments are not more than 50l. or 60l. a year, who pay 6l. or 7l. in poor's rates, not to mention nearly as much more in other taxes; at the same time that it is most *feelingly* demanded of them by law to *keep houses of hospitality*. And the burden is daily increasing to a most alarming degree. It may be concluded, from the best information, that the poor's rates, throughout the kingdom, have increased within the last sixty years, notwithstanding the boasted extension of our manufactories, in the proportion of ten to one*.

Increase of
poor-rates.

Where was the equity of the House of Commons—and what became of the vigilance with which the spiritual Lords in the upper-House ought to have supported the rights and interests of the inferior clergy, when they suffered the clause to stand, in the house-duty bill, which exempts *farm-houses* from the tax, while those (generally wretched) habitations, which the clergy are *compelled* to live in—to which large quantities of land are often annexed, and which are in all instances, except in the metropolis, supported by the immediate produce of land, and the owners absolutely *farmers*—are left open to this duty! For is the clergyman's property rated, in the assessment of other taxes, even upon the score of common impartiality. He is taxed in the *net produce*, while the farmer is rated only to his *rental*. He is assessed too for the whole year at the commencement of it, when his receipts are wholly uncertain, and entirely dependant upon the farmer's will. The farmer occupies as he

Inferior clergy
liable to the
house-duty bill.

The clergy
taxed in net
produce.

* In Birmingham and other trading towns, the poor-rates are not less than 8s. in the pound. Suppose a rector's stipend to be drawn from a landed property, in one of these parishes, acquired by commutation or otherwise, before trade had existence here—What oppression has the progress of manufacture produced to him, rendering his duty ten times what it originally was, and reducing his income two-thirds of what it was intended to be.

Tithes.

pleases, but is certain of his profits in some shape ; but he may some years so occupy as to pay little or no tithe to the minister. In this case the former receives all the crop, while the latter pays a large portion of the taxes.

Exemptions in favor of the army and navy.

Exemptions are also extended to other orders. The pay of officers of the army and navy, and of most of our civil officers, is not saddled with poor-rates, land-tax, constable's rates &c. &c. In the tax on servants, officers on half-pay are not liable to the duty for one male-servant, though in many instances they pay no wages ; while the poor vicar, *whose revenue is much less than half-pay*, must account both for wages and duty*.

Taxing tithes degrades the clerical order.

Taxing the clergy for their tithes is an attempt to dishonour the Deity, at the same time that it degrades the clerical office ; whereas an exemption from taxes of this kind, were even their revenues *by any other means* made less than they are, would be a cause of raising them in the eyes of the people.—It is at all events unreasonable to demand taxes for their tithes, (even though their lands, at least that part of them which might be more than necessary for their domestic occasions, should be taxed) because they have already been paid for in the hands of the farmers.

The custom of nations.

All nations have in their origin been uniform in this one point, as a common dictate of natural reason, to express their reverence for the Deity, however the public distresses of *more civilized* states have induced some of them in latter times to violate this sanction. But even among these, taxation is now generally restricted to the wealthy of the priesthood. In Poland, the exemption extends to two thousand florins, more than two hundred pounds per annum of our money.

Poland.

* Every acting officer without distinction in the land-service, including marines, who employs one soldier of the regiment to which he belongs as a servant, is exempt from the duty for such servant, 25 Geo. III. c. 43. While the village-priest is harrassed by informations and distrained for a penalty of 50s. if the parish-clerk is seen to saddle his horse, or to prune his plum-tree.

“ The

" The Indian Brachmans were ever exempt from Indian Bramins.
" legal penalties and from all common tribute *."

Were the clergy privileged in this particular, it would be worthy legislative consideration, whether they might not be the properest persons to determine Clergy proper determine disputes respecting taxes. disputes arising from the collection of taxes in their respective districts; by which means they would render themselves additionally useful to the community.

The Druids, the ancient priests of our island, Druids. judged all public and private causes, and enjoyed a general immunity from taxes †.

This observation naturally induces the consideration—whether—as the adoption of such a measure would render the clerical character more respectable The Clergy rendered more serviceable. in the eyes of the people,—it might not be with propriety *extended*, so as to render them still further serviceable.

It might, for instance, be made part of the clerical duty, to superintend the parochial masters of Sunday-schools;—to see that the children were duly instructed in reading, writing, and common arithmetic; and where, in particular situations, such preceptors could not be parochially provided, the clergy themselves might become the instructors in such necessary knowledge. Sunday-schools,

The clergy might promulgate the laws to the people, communicating the substance of every act, as it passed in each session ‡. However ignorant man may be

* Porphy. de abst. Lib. iv.

† Cæs. de Bell. Gal. Lib. vi.

‡ The disease of infinite accumulation in our laws, is come to a head that demands parliamentary attention, to save the country from the ruin, that must ensue, the moment the science of law and the administration of justice cease to be practicable.

In the year 1785, *ninety-five*, and in 1786, *one hundred and sixty* acts, were added to the statute-book.

It has been said, lawyers possess the talents of creating employment for themselves, and that one half of the profession is occupied in correcting the blunders of the other.—Our legislators seem to have improved upon this character, for it frequently happens that one act of parliament creates a necessity of passing three

Tithes.

be in other respects, he has a natural demand upon the government of his country to furnish him with means of being acquainted with those laws, which threaten both his property and person.

Might be made
the means of
promulgating the
laws.

The clergy might universally act as coroners, and, it is probable, with much more propriety (if we judge them by the verdicts of their juries) than those petty-fogging attornies, and other low party-men, who usually fill that office.

The great want of magistrates, in counties distant from the metropolis, (to say nothing of the abominable perversion of every principle of jurisprudence, and the unfortunate, but too common, alliance of ignorance and depravity among those emphatically called *trading justices*) is an object of universal regret. Were the clergy obliged to act in this capacity, justice being at every man's door, the dread of punish-

The good effects
that would arise
from the clergy
acting as magis-
trates.

three or four others; and a great part of the time of our legislators is consumed in elucidating their own obscurities and correcting their own mistakes. Among the above statutes there are no less than eighteen made to explain, amend, and rectify errors of former statutes: nor does the inconvenience stop here, for these explanatory laws often themselves become subjects of explanation, and these amendments require themselves to be amended.

It is a law-maxim—"Ignorantia legis neminem excusat;" but, as the laws of England are impossible to be known, society stands in the same predicament with respect to them, as they would under the operation of an *ex post facto* law.

The Athenians were very careful in the promulgating of their laws, and the roman law was promulgated by clear and legible characters in the most frequented public places. (Digest. 14. 3. 11. S. 3.) But neither in great characters or small; neither in public places, or private; are the laws of England promulgated. They are not even advertised, equally with common pamphlets. They are merely printed by the king's printer, in the old gothic character, and sold at a very high price; which, added to their bulk, renders it impossible for one in five hundred to purchase them: and, as it were to prevent any knowledge of them through the medium of the regular press, every newspaper is stamped with a heavy duty, and an act of parliament is made to prevent its loan under a penalty of 50l.

The witty author of the World truly says of the statutes—they are what all must obey, and yet few are informed of. Like the sphynx of antiquity, they speak in enigmas, and yet devour the unhappy wretches who comprehend them not.

ment

ment, *immediately impending*, would smother vice even in embryo; whereas, from the present precarious and expensive administration of it, and more particularly from its *delay*, it not only passes unnoticed in the bud, but its full blown enormities often elude punishment, and are seen to root with a strength and rankness, that baffles the power of legislation.

The clergy, seated in the chair of magistral authority, might rationally be expected, from the advantages of education and the large portion of their time uncontrolled by other occupations, to do credit to themselves and extensive benefit to the community. It also merits observation that the resident minister must necessarily possess a more perfect knowledge of the true character of every person in his parish, than can possibly be obtained by the distant magistrate; hence would arise almost the moral certainty of detecting, in the first instance, perjury, prosecutions arising from private malice, and innumerable nefarious practices subject to their cognizance. In short, to constitute every clergyman a magistrate in his own district would effectually destroy most of the alarming evils, of our criminal jurisprudence.

Men of the sacred character thus acting, without fee, would annihilate that most base and disgraceful monster, a mercenary magistrate. We should not only have a magistracy probably well-informed in points of legal knowledge, but such as would, at least in the provinces, possess a thorough insight into almost every character appearing at their bar—a circumstance at present impossible to the most honorable in the profession.

A general introduction of the clergy to discharge the functions of magistracy and police would likewise so greatly divide the business of a justice of the peace, as to render it extremely light to individuals. This would consequently be the cause of removing the principal objection of this office—viz. the weight of business, which deters gentlemen of rank and character from acting in the commission. Possibly, this objection

Further good consequences from the adoption of this measure.

Tithes.

jection being removed, persons of the first families and character, many of whom are closely allied to the clergy, would step forward, from a love of popularity, as *honorary* assistants in the commission.

Every peer of the realm is a magistrate ; but how few are found steadily acting in that laudable capacity ? Restore the profession to its ancient dignity, the fact would be otherwise.

From the adoption of this plan, it may be rationally inferred that the quarter-sessions would soon display a tribunal much more respectable than at present. It would increase that importance and authority, which, in these times, is indispensably necessary to support the influence of the priesthood ; it would at the same time add reverence to the bench of justices, and consequently to the laws. It would supply the very useful, but obsolete, authority and benefits of the sheriff's tourn and the court-leet ; and would greatly tend to recover that " master-piece of judicial policy " —the subdivision into tithings." It would operate as a revival of Alfred's wise institution of frankpledges, the clergy becoming, in a great degree, *ex officio*, pledges to the public for the good behaviour of their respective parishes.

An impartial and upright magistrate is, next to the laborious parish-priest, the most useful, honorable, and best character, the country knows. More, much more, than a lawgiver is to a state, is an honest intelligent magistrate to the district in which he acts : what is theory in the one, is practice in the other. To the first we are perhaps indebted for much *intended* good ; from the latter we receive *real* beneficence. Such an appointment would invest the clergy with the power of practising in the chair of magistracy those useful and necessary principles, which they inculcate in the pulpit ; would enable them more manifestly to render " their lives a comment upon their page."

CHAP. II.

Tithes considered as the revenue for support of the parochial clergy.—The nature of tithes, &c.—The seizure of tithes and church-lands by William I.—Suppression of monasteries by Henry VIII.—The introduction of lay-impropriations and the subsequent injuries received by the church from the legislative appointment of money-payments in lieu of tithes in kind.

HAVING thus considered the political necessity of a religious establishment, and examined the benefits that actually do result, as well as those that might be derived, from the ministering servants of the gospel; our present attention may be properly directed to the revenue they are entitled to expect, and to a comparison of that revenue with the income they really receive.

The provision of the clergy in general arises from tithes;—a provision appropriated from very high antiquity.

Tithes are the tenth part of the increase, yearly arising and renewing from the profits of lands, the stocks of lands, and the personal industry of the inhabitants; payable towards the maintenance of a parish-priest, by every person, who hath any thing titheable in the parish, *unless he can shew some special exemption therefrom*: the first species being usually *predial*, as of corn, grass, wood, fruits, herbs; the second *mixed*, as of wool, milk, pigs &c; the third *personal*, as of manual occupations, trades, fisheries, and the like*: or they may be more simply divided into great and small tithes. Thus liberal was the original legal establishment for the support of the national church!!

* Black. Com. Vol. II, p. 24.

Objects of this chapter.

Provision of the clergy.

tithes.

Different kinds of tithes.

Tithes.

It now remains to examine by what means this establishment has been reduced to that poor pittance, which is the present portion of the clergy.—But, as it has been made a question by some, whether the exaction of tithes be directly warranted by divine right; we will first venture a few observations on that subject*.

The

* As to the *general divine right* of tithes, if God is to be worshipped, there must be ministers to officiate in this duty, and a maintenance to support such ministers: therefore, every law of God, commanding this worship, must *also* command a support for the office.

In all duties, the injunction of the *end* must include the injunction of the *means*; and whoever commands the one, must by necessary implication command the other. The appointment of ministers being therefore necessary for the performance of our duty to God, will be allowed to be commanded of God, or of divine appointment; and a *sufficient maintenance* for such ministers must also of necessity be understood as a divine appointment.

Suppose we admit tithes not to be due to the evangelical ministry—as to the *quantum*—by a positive divine law, in the same manner as they were to the Levitical ministry; yet, when the quantum is once settled by law in any Christian state, they are as fully founded, as if due from the direct divine appointment; and it is as much a violation of the law of God, as well as robbery of his ministers, to detain them.

A *sufficient maintenance*, for the support of God's worship and ministers, is due of divine right, by the law of God, declared by the voice of nature to all men, as well as positively enjoined in the gospel. The quantum of every man's substance may indeed be determined by the civil government—we will allow that it may be left to their determination;—but, *when* determined, (whether a tenth, or a twentieth, be the appointment,) it is done by the authority of God, and is in fact as valid as if his own voice had commanded it. An act of parliament is adopted for raising so much money;—it is left to commissioners to draw up the assessments, and to rate every man, as they may think right; but, whatever they charge to each individual, becomes as strictly due under the act, as if therein particularly specified. Whatever any one does by delegate is of the same validity as if done by himself. It may perhaps, superficially speaking, be now called not God's law, but man's law, that demands a tenth of every one's profits for this purpose; but still the sacrilege is the same which withholds it, because the obligation to support divine worship is the same.

The exact quantum depends upon the law of man; the *sufficiency* of maintenance arises from the law of God. See Prideaux.

As

The sacred volume informs us that the patriarchs, ^{Divine right of} who were the peculiar favorites of God, judged it ^{tithes.} right to make provision for those that should be immediately employed in his service, and that the tenth of men's goods should be the proportion of it : And we learn that Jacob, under the immediate heavenly impulse, built a house for divine worship, and endowed it with the tithe of all his possessions. Here is a strong argument for the divine original (some

As to the *national civil right* of tithes—*Ethelwulf*, in the year 855, settled the first grant of tithes not only on the clergy then in being, but also on their successors for ever. *Alfred*, his son, about thirty years afterwards, in a code of laws he published for the government of the whole realm, strictly enjoins the payment of tithes. These laws are confirmed by *Atelstan*, in a parliament of all England, about the year 928. *Edmund*, his brother and successor, made a law also commanding all Christians religiously to pay tithes. *Edgar* enacted that, if any one refused to pay tithes, the king's officers, with the bishop or priest, having first made him pay the tithe, should leave him a tithe of the rest, and divide the remaining eight parts between the bishop and the lord of the manor: and this was to be done, whether the party offending held of the king, or of any other lord. *Ethelred*, his son, in a parliament of all England, concluded a similar injunction with these words—"Let no man take from God, what belongs to God, and what our predecessors have consecrated to him." "Bromptoni. Chron. Col. 902. *Canute*, the Dane, having conquered the kingdom, far from abolishing these laws, re-enacted even the most penal of them. *Edward*, the Confessor, ordained that tithes should be paid of all things great and small. *William*, the Norman, also confirmed the right of tithes, particularly of "corn, cattle, milk, wool, bees, meadows, parks, and of all "traffick, that is—personal tithes;—"things (says he) which "were heretofore granted by the king, his barons, and people; "but many persons, by the instigation of the devil, have de- "tained them, and rich priests have not looked after them." *Leg. Gul. Conq.* l. iv. 7. 8.

Here then we see the civil right of tithes to have begun with the monarchy itself ;-- that it was regularly confirmed and re-established to the time, and in the person, of William ; since whose reign it has been always duly acknowledged. So that tithes among us have the same *civil* foundation with the government itself ; being indeed one of the fundamental articles, upon which it was first established. Where then is there a stronger tenure in the kingdom than this claim of the clergy ? Where is the landowner, who can shew any better title to the other ~~the~~ parts of his property ?

The Levitical
law.

Tithes antecede-
nent to the
Jewish law.

Lord Coke's
opinion.

hundred years prior to the law of Moses) of maintaining the ministers of religion, with the tenth of the bountiful gifts of the Deity. To this we add that—if the Levitical law had its origin in heaven, the injunction of paying tithes for the support of the priesthood, which is a part of that law, must be also from heaven: that—if the mission of Moses was from the Divinity, the payment of tithes, which he commanded, must be a divine appointment. In short, this ancient testimony of religious homage to our Creator was in practice antecedent to the Jewish law *;—received a divine sanction under the Jewish institution;—is recorded in the last of the prophetic writers, under the idea of a *debt to God*, remarkably enforced with a blessing or a curse on the possessions of all, who should maintain or violate it †;—was in use even in our Saviour's days, and obtained countenance and additional authority from him ‡;—this whole progression, duly connected and considered, demonstrates the appointment of tithes, for the maintenance of an ecclesiastical ministry, to be a divine institution. Nor is it our religion alone says this; the boasted oracle of our laws (Sir Edward Coke) asserts the same—“*dismes sont choses spirituels et dues de jure divino.*” *Case l'evêque de Winchester.*

It has been urged that tithes cannot be ascribed to divine appointment, but owe their establishment solely to human laws;—that Pepin began, that Charles the great confirmed the payment of them, and that other princes followed their example. Be it so; still we contend that these sovereigns acted thus only from their *new-acquired* sense of the divine appointments;—as soon as the will of the Deity was revealed to them, they manifested their obedience.

Some have contended that the payment of tithes to the *Jewish* priesthood is no argument to support the right in the *Christian* clergy. To such they reply

* Gen. xiv. and xxviii. Heb. vii.

† Malachi. ch. iii. 8.

‡ Luke xi. 42, and xviii. 12.

that

that sacrifices were indeed types of our Saviour, and were done away by his coming; but that tithes were no part either of the typical or ceremonial law, consequently that their object was not temporary. Their first purport was—a grateful oblation to the Giver of all good things, for his blessing upon human industry: and must not the same motive exist through all time?—The second was a support for the servants of the altar, grounded upon the just maxim that the labourer is worthy of his hire: and will not the same principle also endure for ever*?

Original purport
of tithes.

The reasonable-
ness of the de-
mand.

But the ecclesiastical officers of the present day rather choose to rest their demand of tithes upon human appointment; since it is to statute, not divine law, that modern times more incline to confess obedience. These sacred ordinances cannot, however, be dismissed, without observing that tithes were *paid by all persons*,—were paid in their *most perfect state*†—and were *presented to the Priest*.

Tithes presented
to the priest in
their perfect
state.

Whether the wisdom of our laws directs the payment of tithes, or substitutes anything else in lieu of them, as a ministerial maintenance, is a matter of little consequence to the question here agitating. Reason, as well as religion, demands an honorable and competent provision of some kind; a provision suitable to their office and rank in the community. The mode of collecting it may be governed by the state of the country. That which is most accommodating to the clergy and least burdensome to the people, should be preferred. Our legislature, in conformity to religion and reason, has guarded by positive laws, that which the primitive zeal of Christianity sufficiently secured; but which, in the present age, when *that zeal* has subsided, would otherwise be extremely insecure and precarious. Cruel indeed would be the lot of the clergy, had they no other recompence for their labor than what

Justice demands
a competent
provision for the
church.

Secured by law.

* Melchisedec, the priest, and king of Salem, to whom Abraham offered tithes, was not as Aaron, ordained for a time, but established by God for ever.

† See Levit. xxiii. and xxvii. Deut. xvi. &c.

Tithes.

might be supplied by the sparing hand of gratuitous beneficence. In that case, the curse entailed upon the house of Eli would soon become the doom of the Christian priesthood,—they must crouch for a piece of silver and for a morsel of bread*. Whatever are their sufferings in other respects, happily the clergy of the established church, *even in these times*, stand not wholly exposed to the severity of such a fate; but are in some degree protected from the proud caprice of aristocracy and the sacrilegious tenacity of the vulgar.

Consequences if the clergy depended on public bounty.

The right clear; the receipt doubtful and expensive.

The *right* of the clergy to tithes is far removed beyond the reach of possible disputation; but unhappily, in litigated cases, they are always found expensive, and too often *difficult* of recovery, *doubtful* in receipt, and *partial* in produce; evils, arising from various causes, but chiefly imputable to the *sacrilege* of past ages, and the *impious levity* of the present.

The Normans possessed themselves of tithes.

History informs us that the Normans †, with the estates and rich manors of the ancient English, seized the tithes also, and disposed of them—some to their servants, some to their daughters in dowry. The poor parochial clergy were English or Saxons, whom they hated and neglected. The bishops were chiefly Normans; and the business of great men was to encourage Norman monks, and to build them monasteries, for which they obtained endowments of the tithes and glebes of the secular clergy, to whom they left only a bare competency, at the discretion of the superior. This practice prevailed so far that Pope Alexander IV. complained of it, as “the bane of religion, the destruction of the church, and a poison that had infected the whole nation ‡”.

* 1 Sam. ii. 36.

† Before the time of William the Norman, the clergy were supposed to possess more than one third of the lands of the kingdom, exempt from all taxes. This monarch, so execrated for his tyrannies, seized much of this property, and changed the tenure of the rest from frank-almoign, or free alms, to the feudal tenure by barony, which subjected them to all civil assessments.

‡ Du Fresne Gloss.

But,

But, as the tithes &c. were at this period torn from the parochial clergy, ought they not, at the dissolution of the monasteries, to have been restored to their rightful properties?—Undoubtedly—the justice of this measure was admitted by the nation, and it was generally understood that the dissolution was chiefly grounded on the necessity of doing such justice to the parochial clergy, and of restoring the alienated goods to the defrauded altars.

By the first appropriation of churches, nothing more was conveyed to the monasteries than the mere advowson; the glebe, tithes, and oblations were encroachments. The lay-patrons qualified their grant of churches to the monks, with these restraining expressions—*quantum attinet ad laicam personam, quantum laico fas est, quantum ad patronum pertinet*, and the like: thereby declaring that they did not alienate the tithes, nor properly assign the cure of souls; but gave the *jus patronatus* only, a lay-tenure at their own disposal. They meddled not with the spiritual cure, nor with the endowment of it; for they were then under a double awe of conscience, not to assume the office of priest, nor to take away his inheritance. They were then afraid of the curse upon devouring holy things; having tradition and charters to inform them, that at the foundation of a parish church (as well as of a religious house) there was a solemn denunciation of the judgments of God against every person, who should, in future time defraud that church, or presume to diminish or disturb the rights and property of it*.

Nothing originally conveyed but the advowson.

“ It must have been obvious to the wisdom of the nation, that the religious houses had made a double encroachment upon the laity and clergy too, and owed them both an equal satisfaction: and therefore

* Monasteries are granted to laymen, in as large and ample manner (says the stat.) as the governors of those religious houses had, or ought to have the same. Now it is manifest that the governors neither had nor ought to have them, otherwise than for the service of God and the benefit of the church. See Spelman p. 165.

“at

Distinction necessary &c.

“ at the dissolution of them, a fair distinction ought to have been put between that part of their revenues which had been formerly lay-fee, and that other part, which was originally church-endowment in glebe, tithes, and offerings; that so in equity and all conscience, each part might be restored to the primitive use and proper owner—the lay-fee to the nobility and gentry, and the ecclesiastical rights and dues to the clergy *.” This was the distinction, when Hen. IV. seized the alien-priories: we see it thus defined in Stat. 6. Hen. IV. c. 2. and this, with other purposes of public benefit, was thought to have been provided for, when Stat. 31. Hen. VIII. was passed.

Committed to the care of the King.

As the converting them (the religious houses) to the good and godly uses intended—viz.—erecting grammar-schools for the education of youth in virtue and godliness, for augmenting the universities, the increase of vicarages, and the better provision of the poor and needy, could not in that parliament be conveniently done, therefore in the mean time, they could not and ought not to be committed to any other person, than the King’s Highness.

That confidence abused.

What was the event of this confidence in royalty? Instead of applying them to these honest uses, the sacrilegious tyrant, called no other parliament till he had disposed of the whole to laymen, in gratification of his own selfish purposes: and, in order to perpetuate his injustice, he granted the landed property of the religious houses to be held *tithe-free*! a circumstance that has since opened a wide door to litigation, and afforded the laity pretexts for endless oppressions of the clergy!

The whole landed property granted tithe-free.

The injustice of this measure.

It is very natural to imagine this seizure of the possessions of the church, under a false pretext, and their retention afterwards in the hands of the crown, contrary even to that pretext, might have satisfied royal rapacity, without making them tithe-free, in

* Kennett’s Imp. p. 82. 122. Cart. dotationis eccles. paroch. Dugdale’s Warwickshire p. 539.

the hands of laymen. There never had been any precedent for a mere lay-person's becoming an impropriator. The sacred nature of tithes and oblations had uniformly been acknowledged and confirmed by every statute, that referred to them in this reign.—The very last act *, passed before the dissolution, particularly asserts “*that tithes and oblations are due unto God and holy church, and therefore they who substract and withhold them, have no respect to their duties to Almighty God, but do against right and good conscience, while they pursue such detestable enormities and injuries.*” And yet this very monarch seized and alienated all the revenues of the religious houses, without the least exception of the rights of the oppressed vicars. Nay, he admitted the interest of strangers, travellers, and the poor, by binding the new possessor of any religious house “to keep, or cause to be kept, an honest continual house and household in the same site or precinct.” He admitted the claims of all manner of persons, excepting only the *parochial clergy*.

The selfish design of the monarch was to secularize the ecclesiastical property: Why was it not altogether secularized? Why not like other landed property, rendered as well subject to tithes as to church-rates, county-rates, and other public assessments? This is the only just reason that can be alledged—as the religious houses in these times maintained the poor,† and their lands were granted to laymen expressly on the conditions they were held by the monastic orders—and principally on this;—it was expected of their new possessors likewise that they should wholly support the poor; but, since *that condition* is no longer pretended to be observed, in consequence of which an additional portion of poor-cells has been imposed upon the parochial clergy, With what rational

The partial injustice of Henry.

Exemption from tithes on conditions never performed.

* 27 Hen. VIII. ch. 20.

† The poor through the peculation and mis-management of parish-officers, now cost the public purse the enormous sum of *three millions* sterling per annum.

Tithes.

pretence are they exempt from the payment of tithes? Where is the much vaunted justice of the country, if the possessions of any body of men are liable to seizure from the harpy claws of *ex post facto* authority*?

Number of monasteries, &c.
&c. suppressed.

Amount of the advowsons, &c.

Very many of these estates were purchased by the clergy---the bishops and abbots being the principal buyers of the immense tracts of crown lands sold by Richard I: many of them were the immediate donations of the monarch himself: others had been recently bought of the crown. This arbitrary prince, however, suppressed 645 monasteries, of which twenty-eight had abbots, who enjoyed seats in parliament; 2374 chantries and free chapels; and 110 hospitals;—in which he found vast treasures, and to which was annexed a landed revenue then valued at 2,853,000*l.* a year, an immense sum in those days. We are also told by Spelman and Selden that the advowsons, belonging to these establishments, amounted to more than one-third of all the parishes in England, and those chiefly the richest benefices; which had been obtained by the monks, and by the king's licence appropriated to the use of their corporations, under the positive conditions of maintaining the poor, repairing the churches, and providing for their perpetual service—the peculiar purposes of their foundation.

* Henry VIII. occasionally persuaded his parliament, that the surplus of the abbey-lands, after duly providing for stipulated purposes, would greatly lessen the national expences, and lighten the otherwise necessary imposts; but very soon after, he demanded and obtained monstrous subsidies, having employed those lands in corrupting the delegates of the people.

Henry should have reflected whether crown-lands, as well as church-lands, were not the property of the people?—Whether, in fact, they were not more so, as being the immediate grant of the nation, while those of the church arose from the local and partial benevolence of individuals: *and it is for us of the present day to enquire*, whether those crown-lands, which since that period, have been secretly applied and disposed of, to the most oppressive purposes, would not have been at the time better bestowed, in lieu of ecclesiastical property?

This monstrous property was placed, it is true, in very ill hands; the manner in which it was held was an injury to the community; the unbecoming lives of these men formed, in many instances, a serious evil: but public evils, whatever their enormity, should, if possible, be put in a train of self-decay, rather than be expelled by the hand of violence.

These societies were indeed just objects of reform; but yet, great part of the individuals deserved rather pity than punishment. The measure was right, but the mode was wrong. Many of the members possessed much useful science, and were of great public worth; who could not dig, and to beg they were ashamed; whose youth, the only season of professional acquirement, had long been spent in peculiar research, and their latter days passed in that ease and affluence, which men of true piety deserve to enjoy:—thus circumstanced, they were at once stripped of their all, turned out by the unfeeling monarch to the pitiable necessity of receiving as their only relief, the voluntary bounty of the benevolent.

The monks themselves ill used.

To support and promote agricultural industry, to controul and correct eventual abuses, was good in principle; but it might have been gradually effected, without breach of national faith, without bringing sudden misery upon individuals.

This immense plunder did not long support the tyrant's extravagancies. Having possessed and diffused all the property of the Popish clergy, he in the end commenced an open violation even of his own establishment; extorting from many bishops a surrender of their chapter-lands, he pillaged the fees of Canterbury, York, London, &c. As a compensation to the protestant church for all this impious rapacity, the atrocious peculator founded the bishoprics of Bristol, Chester, Oxford, Gloucester, and Peterborough; whose present revenues amount not to more than nine or ten thousand pounds a year.

Further instances of rapacity.

Means by
which these mo-
nasteries obtain-
ed their vast
possessions.

Decretal epistle
of Innocent III.
respecting
tithes.

Observation of
Blackstone and
Coke on the
order.

Henry seized and
appropriated
the tithes as
well as the other
property of the
monasteries.

From the total decay of religious influence among us, a common observer can have little conception of the means by which the religious houses acquired such vast possessions; but history informs us that they were frequently endowed with tithes, lands &c. through the caprice, as well as piety, of individuals. As to tithes, the laity were obliged to pay them somewhere; they therefore either erected abbeys and there paid them to monks of their own appointment, or else granted them to some neighbouring abbey, in gratification of any pique they entertained to their resident clergy: or, if really actuated by devotion, obtained masses to be sung for their souls for ever. The income of the parish-priests being greatly reduced by these arbitrary consecrations, Pope Innocent III. in the year 1200 published a decretal epistle at the palace of Lateran, directed to the Archbishop of Canterbury, commanding all tithes to be paid to the resident ministers of the respective parishes, in which the persons dwelt from whom they were due.

Blackstone observes that this order was correspondent to the ancient law; and Sir Edward Coke tells us "that it bound not the lay-subjects of the realm; but, being reasonable and just, it was allowed, and so became *lex terræ*." This, affixed a period to the arbitrary consecration of tithes; some vestiges of it, however still remain, in those particular tithes, which are claimed by the parson of one parish within the district of another.

This arbitrary conservation of tithes was revived by Henry VIII. in open violation of the law of the land, and in defiance of all reason and equity; not indeed by permitting tithes to be paid to what *priest* individuals pleased, but by seizing the tithes which they had in most instances fraudulently appropriated, as well as the other property of the monasteries; and, instead of restoring them to their respective parish-priests, which was the principal purpose expected from such seizure, basely distributing them among his

his profligate nobility and favorites. This alteration, or rather robbery, of the property of the church, at length roused the resentment of the people, who were astonished at the lay-usurpation of tithes, having ever considered them as the maintenance of men dedicated to the offices of religion;—and (as stat. 32 Henry VIII. c. 7. confesses) they were encouraged to “substract and withdraw the lawful and accustomed tithes due to the *possessors being lay persons.*” When paid to the religious, they always understood them to have been applied to the general support of the church; but they could not comprehend any propriety in paying them to lay-hands, for worldly uses. They thought, and justly thought, that to separate the benefice from the office must be an oppression to the clergy, an obstruction to religion, a prejudice to learning, a disgrace to the church, and a dishonour to God.

The effect of lay usurpations of tithes.

The rage of bequeathing large legacies to religious institutions soon, by its abuse, produced the opposite extreme. The rapine of those princes who invaded the rights of the church, arose in turn to that height that a proper maintenance was not only wanting to the inferior, but even to the superior orders of the clergy; which gave birth to the restraining statutes, forbidding the alienation of lands and tithes, which belong to the universities or the church.

Cause of the restraining statutes &c.

From the above brief detail, it appears that Henry, by his tyrannic seizure and selfish appropriation of the monastic property, removed all reverence for the clerical character, destroyed that sacred respect in which the claims of the clergy were hitherto held by the people, and cruelly shut the door against the poor vicar's accustomed hope of augmentation. For though indeed the great revenues of the church had been very unequally and unjustly disposed of, yet the bishops were not wholly regardless of the parochial clergy; but, as we see in their successive ordinations, from time to time bestowed upon them additional tithes. Let it here be added that many of the monasteries

Consequent injury to the clergy and church.

Seizing the
monasteries &c.
a breach of
royal faith.

nafteries had been endowed by our monarchs, Henry's rapacity was therefore a gross breach of royal faith. With equal honor to the pledged word of a king, with equal justice to the rights of individuals, might the crown at this day reclaim all the landed estates in the kingdom.

It has lately been contended in a neighbouring nation, in vindication of an act not dissimilar to the sacrilege of Henry, that—"if the church-revenues had been the donations of private individuals, they were given for the support of religious duties, beneficial to the people: if they arose from the grants of the monarch, the whole property of the crown originated from the people: if they were in part purchased by the savings of the clergy, such savings were only a part of that bounty which first proceeded from the people."

The principle on which, such arguments are founded, shakes the tenure, not only of all corporate property, but of all royal and national grants.—What then becomes of public faith?

If the church
must be robbed,
public expedi-
ency ought to be
openly pleaded as
the justificatory
motive.

Lay-impropria-
tions.

It would have been far more honorable to have pleaded *public expediency*:—To have openly and boldly declared, that the finances of the country were in a state that demanded some sacrifice, and that they had selected this for its object.

But, admitting this doctrine for the present, what plea can be drawn from it in support of lay-impropriations *?

* Or rather, must not those lay-men tremble, who possess church-lands in England; for which their ancestors gave no just consideration? If, like those of France, they belonged to the nation (and Henry's parliament thought they did, when they vested them in the crown) the crown could not legally alienate them. They were given by parliament to answer the exigencies of the state, and to prevent the necessity of new taxes upon the people. If they were not honestly applied, the king abused his trust. The grantees of the crown were certainly capable of taking whatever the crown was capable of legally granting; but the crown was not capable of alienating lands appropriated to public purposes. What then is the title of the lay-possessors of church-lands?

The

The suppression of the monasteries not only deprived the monks of their lands, but at the same time robbed the secular clergy of very valuable tithes. For, no sooner was the crown in possession of the property of the church, vested there for the public use, than the lands were divided, tithe-free, among the creatures of the court; and the rectorial tithes, which the monks had begged, bought, seized, or any how obtained from the parochial clergy, were converted into money, to support the wanton luxuries of royalty. Hence chiefly arose lay-impropriations, of which there are now 3845 out of less than 10,000 parishes. But if the public consent to the seizure of tithes from the popish clergy was obtained under promise of applying them to the better support of the parish-priests, the parish-priests, now in want of just support, have still a right to expect the enjoyment of them. The tenure, in defiance of which they were first invaded, was much more strong than any that can be set up by their *present lay-possessors*. It was not one, two, three, or ten statutes alone that the parochial clergy rested their claims upon: we find a solemn charter even from king Stephen, more than six hundred years since, intended to place the right of tithes beyond the reach of future dispute, confirming whatever had been granted to them some hundred years before.

Suppression of monasteries robbed the secular clergy of tithes &c.

Origin of lay-impropriations &c.

The clergy were to earn the fruition of tithes, by performing the duties of the national religion. We would ask—by the performance of what duties, as the reward of what services, do lay-men assume to hold them? Even Selden, who certainly was no friend to the clergy, says *—“it is a gross error, to make it clear, “as many do, that if tithes be not due to the priesthood *jure divino morali*, then appropriated tithes “may be still possessed with good conscience by lay-men. The many execrations annexed to the deeds “of conveyance of them, and poured forth against “such as should divert them to prophane uses, should

* Selden's Hist. of Tithes, with review, 4to. 1618. p. 471.

“be thought on, and let them remember also, who says, that “it is a destruction for a man to devour “what is consecrated *.”

Colleges &c.
restrained from
purchasing.

To prevent, however, the just reversion of ecclesiastical property,—even colleges, the societies that give birth and cultivation to divinity, are restrained from purchasing church-patronage †, though absolutely necessary, as a just reward to the claims of merit in their several societies; while laymen may monopolise as much of it as they can find money to pay for.

Dr. Radcliffe's
donation &c.

The great Dr. Radcliffe left an estate to Univ. Coll. Oxon. to increase the number of its livings, for the benefit of the fellows; but, as they were prohibited from purchasing, the Lord Chancellor, as

* Prov. xx. 25.

† By Stat. 9. Geo. II. c. 36. it is enacted that no college shall purchase more advowsons than half the number of fellows belonging to their respective foundations.

In support of this prohibition, it is contended to be necessary to withhold the universities from acquiring such a number as might frustrate the design of their foundation—viz.—the education of youth, by creating too quick a succession of fellows, so as not to leave a sufficient number of men of competent age, knowledge, and experience, to instruct the younger students.

But, may not the succession be too slow as well as too quick? The fellows are not the only tutors: the independent members act also in the same capacity. But neither of them often act thus during more than five or six years. Nor are fellowships in these times confined to men, who really want them, and to whom the emoluments of tuition may be an object.

One of the principal reasons of the growth and establishment of moduses, which so greatly deteriorate the ecclesiastical revenue, results from the fellows of colleges entering upon their livings so very late in life. Men, with one foot in the grave, cannot be expected to set about any great improvement of their glebes, or to enter upon tithe-contentests. Their habitual indolence, their ignorance of the frauds and tricks of the world, their love of money—will all operate against the due support of the rights of those churches, with which they are entrusted. To give livings to antiquated fellows of colleges, is indeed to place them in *mortmain*.

The very college, here alluded to, has as many livings, as fellows; and yet the succession to their livings has ever been extremely slow. It is not the number, but the value of livings, that affects the succession,

visitor

visitor for the king, directed its produce to be divided among the incumbents of their present livings. By this determination, the twelve benefices, now belonging to this society, are *nominally* augmented to 300l. a year: but, what must be the reader's surprise, some would say *indignation*, at being told that the fifth year had nearly elapsed since this measure was resolved, (the augmentation being appointed to take place on the 1st of January, 1789,) amidst the incessant, the reasonable, but ineffectual applications of the incumbents to obtain the great seal to this decree! Politics at last performed what justice had vainly petitioned:—but, alas! *two days too late*.—Radcliffe's heir at law died at this period.—There arises a new opponent to the claims of the college—and the whole business commences *de novo*, which are the wrongs experienced by the clergy, even in cases where there can exist no opponent but the caprice or prejudice of individuals!! Five long years have these incumbents been tantalised with a promised and much-wanted increase of their respective livings, resulting from a fund appropriated to their foundation by its liberal donor with far other intentions than to be withheld from the objects of his favor, until most of them are lodged beyond the reach of all human bounty*.

Delays experienced by the clergy.

These

* When alluding to this mighty impropiator and his conduct in office, some remarks will naturally be expected (in which the reader shall not be disappointed) on the regularity with which his lordship *timed* his presentations.

The law recognizes him; the nation *entrusts* him with the guardianship of the rights of the church:—How, (it remains to be asked) has he answered the just expectation?

When the noble lord was generally thought to be on the point of quitting office, in the year 1788, during the lamented illness of our monarch, he had numerous livings vacant on his hands, vacant, alas! many of them for years. When his removal became very threatening in december,—from the *eighth* day of that month to the *fourth* of march following, he filled up *forty-nine* of them!!! Thus many indigent and deserving clergymen, whose miseries might have been effectually relieved by a due appointment to these preferments, which so long lay not only idle, but dilapidating into his lordship's possession, seem to have been

G

thought

Spelman's observation on impropriations.

These remarks upon the point of impropriation cannot, perhaps, be better concluded than with the following observation of Sir Henry Spelman " what " are termed *impropriations* obtained their name " from being thought *improperly* lodged in the hands " of laymen *."

Language of law and parliament that no man shall be deprived of his property without recompence.

It has ever been the uniform language of a British senate, that the meanest rights of the meanest subject should not be taken away, even for the public good itself, without obvious necessity and adequate compensation. It is however widely different with the rights of the church. Several acts of parliament have from time to time deprived the clergy of various tithes, not only without giving them an equivalent, but in some cases, without the smallest recompence.

thought unworthy of the smallest attention;—but yet, patronage was not to be ultimately lost, or suffered to devolve upon his successor. To gratify the spleen of party (as it should seem) *forty-nine* presentations could be made in three months:—to rescue merit, learning, and labour in the public service, from oblivion and penury, nine-and-forty glorious opportunities remained months and years unheeded in the custody of this keeper of the king's conscience!!!

It was asserted, in the public prints of the year 1792, that—" the chancellor had no less than *eighty-three* livings vacant in " his gift: to increase our surprise, it was said some of them " had been vacant three years, or more." Such vacancies are an injury not to individuals only, they form also a public wrong. During the vacancy of a living, the church-wardens are entrusted with its rights, receipts, and appurtenances. All books, papers, deeds, records, and securities, belonging to the parsonage, are lodged in their hands—surely with little propriety! The glebe they dispose of upon their own terms, generally to their friends; the parsonage-house goes to ruin; the documents, which would elucidate disputable tithe-claims, are garbled, cancelled, concealed, or produced, as their own, or the parish interest, may best be supported.

Where, again, is the watchful care of the guardians of the church? Would not the introduction of a bill, by their exertions, to compel presentation to such crown-livings in a limited time, reflect credit on the bench? If a layman, which originally was not the case, is to be guardian of his majesty's conscience, and as such becomes a most extensive church-patron, the rights of the church and the public interests require that he should be subject to the same forfeiture from lapse of time as other lay-patrons are.

* Tithes Ch. 29.

By

By the 11 and 12 W. III. c. 16. it is enacted, that
 “ whereas the growing of hemp and flax is, and would
 “ be exceedingly beneficial to England, by reason of
 “ the multitude of persons that are and would be em-
 “ ployed in the manufacturing of these two materials,
 “ and therefore do justly deserve great encourage-
 “ ment, every person, who shall sow any hemp or
 “ flax, shall pay to the parson, vicar, or impropri-
 “ ator, yearly, the sum of five shillings, and *no more*,
 “ for each acre of hemp and flax so sown.”

Instances to the
 contrary in cases
 that respect the
 clergy.

Hemp and flax.

So also of madder by Stat. 31. Geo. II. cap. 12.
 Thus, because the growing of these articles, was
 thought to be beneficial to the country at large, the
 honor of God was set at nought, and the interests of
 his ministers sacrificed without mercy. Upon the
 same consideration the church might, without the
 return of any thing that can constitute an equivalent,
 be spoiled of every valuable right. What is the most
 beneficial product of this nation; but, because it is
 beneficial to man in general, shall the ministers of the
 Deity be therefore deprived of it?

Madder.

With respect to timber—by the 46 Ed. III. c. 3.
 it is enacted—“ As the complaint of the great men
 “ and the commons, shewing by their petition, that
 “ whereas they sell their great wood of the age of
 “ twenty years, or of greater age, to merchants, to
 “ *their own profit*, or in aid of the king in his wars,
 “ parsons and vicars of holy church do implead and
 “ draw the said merchants into the spiritual court for
 “ the tithes of the said wood, in the name of this
 “ word called *sylva cœdua*, whereby they cannot sell
 “ their woods to the *very value*, to the great damage
 “ of them and of the realm; it is enacted and es-
 “ tablished, that a prohibition in this case shall be
 “ granted.”

Timber.

How ridiculous the plea!—How unjust the object
 of this statute!—At that time nearly two thirds of
 most parishes were woodland.—What a severe blow
 was this to the clergy of those parishes!! The fla-
 grant partiality of such a law is likewise so conspicuous,

Hardship on an
incumbent in a
parish chiefly
wood-land.

Edward unfav-
orable to the
clergy.

Henry.

The clergy de-
graded by these
acts of the
legislature.

The conse-
quences.

Partiality in the
payment of
tithes the cause
of the general
odium.

that it is really astonishing that the people ever tamely submitted to it. Tithes, arising from the produce of the earth, are a general grant to the clergy: on what pretext then could an exemption be pleaded for timber?—Corn, hay, and other articles, which demand the more immediate labour, attention, and cost of the farmer, remained still liable to contribute towards the support of the ministering servants of religion; but timber, which is reared by the spontaneous bounty of nature, with very little effort from human industry, was released from the necessary contribution. But Edward, we know, was very unfavorable to the rights of the clergy:—he impiously began that innovation in the church, which his successor, Hen. VIII. so sacrilegiously perfected.

All such violent and selfish acts of the legislature have tended from time to time to degrade the clergy, and to expel from the public mind that sacred sense, which they were formerly induced to entertain of the church and its rights. When the farmer beheld the wealthy woodland-proprietor thus exonerated by statute from contributing to the support of the ecclesiastical establishment, it was natural for him to consider his own heavy payments as a grievance. Hence we may trace the origin of that general odium, into which tithes have since fallen. While the maintenance of the clergy rested equally on all orders of the people, it was cheerfully acquiesced in; the moment these partial exemptions took place, a general clamour against the clergy arose, and an universal dislike to all tithes was the natural consequence.

Thus did these cruel and impolitic statutes not only rob the clergy of a considerable part of their just revenues, but, by causing their maintenance to depend upon an unequal contribution from the people, wherein one part paid of nothing, and the other of every thing—rendered them odious in the eyes of their parishoners, and subjected their remaining miserable stipends to the evasion of some, the dislike of others, and the reluctance of all,

C H A P.

CHAP. III.

Moduses—Their nature and origin.

FROM the difficulties and vexations attending the collection of tithes in kind, has arisen the practice of substituting *moduses*, which, however they might terminate the *immediate* contention between those who agreed to give, and those who were willing to accept them in lieu of tithes, naturally operated to create *future* animosity,—to generate an abundant source of litigation and injustice, to be combated by posterity.

Origin of
moduses.

The payment of tithes was a primary article, not only in the first body of the laws of Edward, the confessor—but also in the re-establishment of them by William the first; and the right was in both, and ever since has been, so positively ascertained, as to allow no absolute prescriptions against the payment of them, *unless derived from a religious house heretofore exempt from such payment*. It has therefore become a rule of law—“*de non decimando nulla est prescriptio*.” A partial discharge, by custom or prescription, is where a particular manner of tithing has been immemorially allowed, different from the general law of taking tithes in kind, and is called a *modus decimandi*.

Grounds of
exemption from
tithes in kind.

All customary modes of tithing—as it is pretended—drew their existence from *real compositions*, or, in other words, *equitable contracts*, entered into prior to the time of legal memory—*i. e.*—the reign of Richard the first *, by deed executed under the hands and seals of the land-owners and the parson, with the permission of the patron and ordinary—sti-

Real composi-
tion.

* 2 Inst. 238. This rule was adopted, when by the stat. of Westm. 1. (3 Edw. I. ch. 39) the reign of Richard I. was made the time of limitation in a writ of right,

pulating

Tithes.

pulating that particular lands should in future be discharged from the payment of tithes by giving some land or other real recompence, by paying certain sums of money annually, repairing the parsonage-house, or doing something for the benefit of the parson, in lieu and satisfaction thereof.

The term *custom*, implies an extension of the privilege de modo decimandi to a whole county, city, town, or parish. *Prescription* limits it to some particular person, with respect to some particular house, farm, &c. This is the definition which the law gives of a *modus*.

That compacts of some kind might, in a few instances, have been entered into by the parson and land owners, is probable: but that in such cases a fair equivalent was given, or the ordinary consulted, when the business could be fully effected at an easier rate, without the knowledge of a third person, by the mere connivance of the parson, is scarcely to be credited. It seems reasonable, however, to suppose that the generality of *moduses* had their rise in money-payments privately agreed upon, for the mutual accommodation of the parson and his parishioners: for, even now, *moduses* are daily gaining an establishment from this source. The new rector is obliged, for the sake of peace, to acquiesce in the money-payments made to his predecessor. Thus, at the conclusion of a second incumbency, the parishioners declare such acquiescence to have established a custom, which nothing shall set aside. This, indeed, is often the case from one incumbency: a clergyman dies the oldest man in his parish*; and because upon his first induction, he agreed to receive stated sums of

New moduses
daily encreasing,
and how.

* When we reflect on the length of time a living is sometimes held by one incumbent, it is not at all astonishing that such a number of *moduses* should have been already established. Sir Edward Coke tells us, that there was a parson of one of his churches that had been incumbent there above fifty years.—“Nor are instances wanting,” says Blackstone, b. III. c. 16, “wherein two successive incumbents have continued for upwards of an hundred years.”

money in lieu of his several tithes, which he afterwards never varied, *nor, indeed, could vary with any prospect of peace*, unless it were to take *less*; these shall have become *customary* payments, established through the memory of man, and therefore preclude all future incumbents from their tithes in kind.—And why so?—“A *modus* is supposed to be of the full value of the tithes at the time of the original composition*.”—How then has the parson, by accepting an equitable money-payment in exchange, where the sole motive was the mutual convenience of the parties, for ever relinquished his right to the tithe in kind?—Or, how can it be deemed a grievance to parishioners, when money is decreased in value, that he requires an augmentation of the payment or insists on his *original right*?

But *Equity* accounts for all pretended *moduses* in a legal way;—*presumes* an original real composition to have been regularly made, by consulting the ordinary, as guardian of the church-property;—admits an *immemorial* usage proved, not, indeed, through the time of *legal* memory, but through the *memory of man*, as ample evidence that such composition did once exist: but which, as it *cannot now be found*, must be supposed to have *perished* in the times of civil commotion. Such are the presumptions admitted in *Equity*! Now, could it be proved that the ordinary was, or was not, consulted in such compositions, how does this alter the justice of the case? It is obvious, from the very necessity of consulting the ordinary, that the fundamental principle of such compacts was—that *the church should not be injured*: How then can *Equity* at this day admit such pleas of custom, to the evident ruin of the church-revenue?

At the original endowment of parish-churches, the freehold of the church, the church-yard, parsonage-house, glebe, and tithes of the parish were vested in the then parson, by the bounty of the donor, as a tem-

The way in
which Equity
accounts for
pretended *mo-
duses*.

* 13 Rep. 152. Uob. 40.

Perpetuity of
tithes.

poral recompence for his spiritual care, intending such recompence to operate like the labor, in *perpetuity*.—To effectuate this intention the law has ordained that the parson, quatenus parson, never dies; but he and his successors are viewed in a corporate capacity. Hence, all the original rights of the parsonage are, in the eye of the law, preserved intire and inviolate to the successor. The present incumbent and his predecessor, who lived seven centuries ago are, in law, one and the same person: what was given to the one was given to the other also*. If this is the law, how is it that custom can legally establish the prescriptions complained of? In the fictitious sophisticated reasonings of the equity-courts, these are considered only as modes of paying the same article; but it is too sensibly felt by the clergy that the coin, called a shilling, is not only not a quarter of wheat, or a load of hay, but bears no resemblance, either in nature, design, or value, to these essential articles. *This* is a transubstantiation that monks themselves would reprobate!

Want of specie
the origin of
tithes in kind.

It may be presumed that, in early ages, the legal establishment of tithes in kind, for the maintenance of the clergy, had its temporary substitution in the want of specie, and was therefore a matter of necessity;—as among the Goths and Vandals, our ancestors, the king's court was supported by contributions in corn and cattle, in lieu of money†. It is very inconsistent with other legal requisitions of the clerical character, as compelling the clergy to sacrifice that time in attendance upon fairs and markets, and the other various employments of agriculture, which ought to be devoted to their immediate professional duties.

So long as lay-impropriations were unknown, and tithes were paid as in early times with reverence and

* Blackstone b. 1. c. 18.

† Mos est civitatibus ultro ac viritim conferre principibus, vel armentorum, vel frugum aliquid; quod pro honore acceptum etiam necessitatibus subvenit. Tacit. Germ. 15.

William the conqueror introduced the custom of paying them in money. Wealth of Nations, b. 1. p. 38.

respect,

respect, they indeed furnished an ample revenue for the church; but it must have been obvious, at their institution, that, from their very nature, they would become an unequal and improper maintenance, whenever they should appear odious in the sight of the people; since their produce, to at least four fifths of the clergy, was then, as it is now, dependent upon a great number of six-penny and twelve-penny articles, which, if withheld, can scarcely be demanded by the vicar, without a forfeiture of that liberality of sentiment, which dignifies the gentleman in the eyes of the world, and which it is his pride to support.--- Yet, if he resigns even these slender claims in favour of one, he must of another, and eventually be contented to relinquish them altogether.

Disputes, hence arising, are the matters which, in modern times, have greatly, though unjustly, degraded the clerical character; while on the other hand, the supineness and well grounded apprehensions of incumbents from the consequences of litigation have impoverished, and in many instances, ruined their resources.

The specious pleaders in *Equity* have acknowledged that a presumption of the ordinary's consent is essential to give any possible propriety to the right of such prescriptive payments, and have assumed such presumption; yet this is directly contradicted by the evidence of history. About the year 801, says Burnet, in his ecclesiastical rights of princes, some priests began to take money, instead of tithes, in specie; but, because by this means the priest might make ill bargains and so cheat the rest, this was condemned*. If then, upon the first appearance of such compacts, they were prohibited by canon law, upon what is the presumption founded, that they were formal acts of the church? Or, do lawyers know the acts of churchmen better than churchmen themselves?—And why, it may be asked, should not

The fallacy of such reasoning.

Evidence of history.

* Cabil. 2. c. 18.

Tithes.

the introduction of such customs be accounted for in the rational manner already laid down?—

Real and true
ground of ex-
emptions.

It is well known that exemptions very rarely pleaded but for *tithes which are extremely difficult, or impossible to be collected in kind*. Does not a very strong implication arise from hence that *some* of the clergy, overawed by the many difficulties attending the receipt of these articles, from the litigious and oppressive spirit of their parishioners; *others*, desirous of peace on any terms, and fearful perhaps of rousing the enmity of the malignant; have, from time to time, made a voluntary sacrifice, and accepted any thing they were able to obtain in lieu of them; and this preference of peace has been perverted by the forced constructions of modern determinations in courts of *Equity* to the wrong of their successors. Is not this a fair way of accounting for such pretended customs?

No instances of
any of these in-
struments being
produced.

Hence too arises another question; and it is therefore demanded—whether *one* of these instruments, upon which these *presumptions* of *Equity* are founded, was ever exhibited in a court of justice? *Not one!!* Did they ever really exist, as pretended, might it not be presumed that one at least had been rescued from the wreck of public outrage? Must presumption be so violent that there exists no single exception?—That civil commotion, or other untoward accidents have positively destroyed them all? Was then the ruin of intestine violence raised purposely to eradicate these memorials?—Was its vengeance so successfully confined to these deeds alone?—Were moduses so peculiarly obnoxious to its resentment, that it has expunged every trace of their existence, except in tradition; while endowments and records of much earlier date have, in so many instances, escaped its ravages??—May we not in common sense, with every colour of probability, conclude that this presumption is a monstrous *fiction of law**?—a sacrilegious adoption, designed

* It were endless to enumerate the absurd *fictions* of the courts, which have been not ill-named *legal lying*.

designed by what is called *Equity*, as an idol to which it may sacrifice the rights of one class of men, to gratify the avarice of another?

Admitting any one incumbent, from whatever cause, to commute tithes for money-payments, how readily must moduses obtain! His successor, an easy man, takes the same; or, it may happen, if a man of some spirit, objects to it;—the reply is,—“it satisfied your predecessor, and ought to content you.” He perseveres in objection—as far as words will go,—his poverty prohibits any other contest. The parishioners, fully aware of this, refuse any other payment. Thus, at the end of two or three incumbencies, a custom is set up, to the contradiction of which the memory of man cannot extend.

How customs obtain.

It is generally allowed that moduses are now daily growing from neglect in the clergy. But is it just,—is it consistent with the intended *perpetuity* of the ministers maintenance,—that the *future* revenue of the church should be lost by the inactivity, imbecility, or inability of *present* incumbents?—Not that the apparent indolence of the clergy is at present altogether imputable to want of spirit; it is, on the contrary, the result of stubborn necessity and impotence of resistance, or of the well founded fear of executive justice, and a prudent dread of *Equity*, which, whatever right it may do to others, is always ruinous to them.

Future revenue of the church should not be prejudiced by present incumbents.

It has been said that, if the parson can prove the non-existence of pretended moduses during any part of the long period which has elapsed since the time of Richard the first, such proof may invalidate or destroy any modus set up against his

Blackstone is pleased to tell us that no fiction is ever suffered to work an injury, but on the contrary is employed only for the *benefit* of the injured. Blackstone's representation of British jurisprudence is like De Lolme's portrait of the British constitution—a second volume to Plato's ideal republic.

The good judge's best support is perhaps to be derived from his professional maxim—“*cui libet in sua arte credendum est.*”

Tithes.

Hardships opposed to the clergy's dispute of moduses.

claims. But how far does this extend in favour of the church?—From whence are the clergy to procure such evidence?—Accident can alone befriend them. If it be in the power of their parishioners to prevent them, which is generally the case, all chance of procuring such evidence is at an end. They bear in their own persons their respective titles to the tithes in question, and ought any plea of custom, which may not have existed more than sixty or seventy years, to impose on them the proof of a negative? Surely the *onus probandi* is an unjust burden upon the clergy!

Some late decisions seem peculiarly severe—adopting it as a principle that even a continued variation in the money-payment, or the payment of the *tithes in kind*, for *forty or fifty years together*, must not set aside a custom to the contrary; but that the parson must prove *various variations*.

Kind of evidence that is admitted to establish moduses.

At the same time, it well deserves our notice, that the proofs required from the opposite party are, of all legal requisites, the most easy to establish. The slightest evidence is sufficient to send them to a jury, who are uniformly hostile to the rights of the clergy.—Witnesses, of the complexion alluded to, give their testimony after this manner.—*They have heard persons deceased (interested persons)* say that such and such *ought* to have been the payment in lieu of tithe in kind (i. e.) such as they wished it to have been.

Not legal evidence according to rules of evidence laid down in other cases.

Were these pretended traditionists still in existence, their evidence would be inadmissible at common law, yet it is, at this day, even at *second hand*, not only accepted but often decisive in equity against the clergy. It is observable too, that the supporters of these pretended traditions are, at the very moment of giving evidence, avowedly acting in behalf of relatives, or connections, that render them what the law emphatically stiles *interested witnesses*.—This is more-over a kind of evidence, which it is almost impossible to detect. Courts of Equity will not suffer the clergy to

to impeach the proofs of their opponents by the only possible means of evincing their falsehood: and, as they are not allowed to controvert what the witnesses say they have *heard*, neither are there any means of determining what they profess to *believe*. The only reason, alledged as the ground of belief, is—that such a one has heard such a one say so and so,—a reason which, unless well corroborated, would in all other cases be treated by a court of justice, and very properly, with the utmost contempt.

The parliament of Toulouse (says Voltaire, in his commentary on Beccaria's crimes and punishments) has a very singular custom relative to the validity of evidence. In some places, *demi-proofs* were admitted, which is a palpable absurdity, there being no such thing as *demi-truth*; but at Toulouse, they admit of quarters and eighths of a proof. For instance, an hearsay may be considered as a quarter, and another hearsay, more vague than the former, as an eighth: so that eight hearsays, which in fact are no other than the echo of a groundless report, are a *full proof*. Upon this principle it was that poor Calas was condemned to the wheel. The same mode of reasoning seems very successfully adopted to rob the clergy of their property.

Adopt the law of evidence of the parliament of Toulouse.

The evidence of tradition is generally vague and uncertain: it too frequently attracts attention to *airy nothings*, very rarely preserving either consistency or truth: it floats about the imagination and frolics in conjecture,—meteor-like, once falling, it cannot be rekindled.—Surely the weakest and most suspicious of all testimony;—such as is rarely collected with accuracy, or related with precision; and, in its nature, incapable of disproof by other negative evidence. In criminal prosecutions for libels, it is frequently left to jury to decide upon the words of the accused *quo animo* they were spoken: this kind of evidence, on the contrary, rests upon the words independant of the intention—"we have *heard* so and so, and *believe* it to be true." To what does this amount?

Tradition weak evidence.

The

Witchcraft sup-
ported by tra-
dition.

Circumstances
strong evidence.

Sentiments of
Blackstone and
Coke thereon.

The various and wonderful feats of witchcraft, that filled so many volumes of the last age, were as commonly heard, and as firmly believed, by the people, as any part of the gospel; so much so, that the least doubt failed not to incur the charge of atheism. If the truth of hearsay-reports are admitted in one instance, they ought also in another; and there is no possible absurdity, however disgraceful to reason or shocking to common sense, which its strongest testimony may not be very readily adduced to support. It is surely far more rational to conclude that a concurrence of well-authenticated facts, linked as it were by a chain, forms a much stronger ground of assurance than evidence, however positive, which outrages every principle of reason. Conclusions fairly drawn from such premises are surely more to be relied on than the veracity of *such* witnesses as are here alluded to!—The testimony of the one may be founded in mistake or perjury, as originating in bigotry, ignorance, or vice; neither can it be confronted with opposite probabilities;—whereas, circumstantial evidence, from its very nature, invites discussion; if probable and reasonable, it enforces belief;—if absurd or contradictory, it betrays itself by unforeseen unguarded inconsistencies.

Blackstone (on the authority of Lord Coke) says—
“ next to positive proof, circumstantial evidence, or
“ the doctrine of *presumptions*, must take place: and
“ presumptions are to be relied upon till the contrary
“ be actually proved. *Violent* presumption, in which
“ those circumstances appear which necessarily attend
“ the fact, is many times equal to full proof. *Pro-*
“ *bable* presumption, arising from such circumstances
“ as usually attend the fact, hath also its due weight.
“ *Light*, or rash presumptions, have no weight or
“ validity at all*.” But this hearsay-evidence, received by our courts of Equity against tithes, including words spoken by deceased persons, modern

* Blackstone's Com. b. iii. ch. 23.

payments of pretended moduses, and a train of concerted fabrications, shuffles together, into one indiscriminate mass of legal absurdity, the *violent*, the *probable*, and the *light*; and thereby gives the weight and authority of justice (due to truth only) to the fictions of tradition and the subornations of perjury:—the very rule of evidence that prevailed against Calas.

The same law-authority * says—"words may be *Words—their*
" *mistaken, perverted, or misremembered* by the *ambiguity.*
" hearers; *there can be nothing more equivocal and*
" *ambiguous than words.*"

Such indeed is the corruption and carelessness naturally incident to tradition that, unless it rest on the pillars of history, reason, and good sense, it has no title to any degree of credit. When it is seen therefore that such evidence is received by a court of Equity, in bar of the clergyman's recovery of his rights;—when we reflect on the endless delays,—endless to him at least, with whose life the proceedings rarely keep pace—superadded to the inveterate malice generated in the breasts of his parishioners, and the shattered peace of his own mind—better, far better must it appear for him to abandon his claims altogether, or what is perhaps tantamount, submit them to the impassioned prejudice of a provincial jury,—than to traverse the thirsty deserts of *Equity*, with no *unselfish* guide, no *honest* index to point the way, under efforts lavish and exhausting, and with indeed very feeble hopes of discovering even a rill from the fountain of justice, to compensate its wearied enquirer.

Parish-terriers are admitted by courts of Equity as strong evidence for parishioners, but as very slender testimony in support of the church. The wise and impartial reasons assigned for such apparent partiality are these—"we must presume (say the plausible
" courts) the clergy to be well acquainted with the *Reasons for de-*
ciding against
the clergy.

* Lib. 4. ch. 6.

Tithes.

“ rights of their freeholds, and therefore cannot suppose them to have long accepted money-payments of very small value, where they were entitled to valuable tithes; or to have successively signed a solemn instrument, declaratory of those rights, without full conviction of its truth.”—Of the other party—(say they)—“ It is not *proved* that the parish-officers and inhabitants were proprietors of lands, we must therefore *presume* that they were only tenants, ignorant farmers, who had very little interest in the tithe-claims, and might for the moment assent to and sign any thing that the parson should require. Their testimony cannot therefore be admitted as conclusive against the proprietors or future occupants.”

Against the first of these positions, it is contended that the clergy, in the origin of parish-terriers, in many instances,—some induced by the difficulties of collecting small tithes, others compelled by necessity and the fear of drawing down upon themselves the threatened resentments of wealthy land-owners—have been, as it were, bribed to lend a sanction to moduses; in yet more frequent instances, they have, through ignorance, indolence, inattention, and poverty, connived at customs, which have been thenceforth continued, in gross violation of the rights of the church. With respect to the *nature* and *value* of their rights, it is insisted that the clergy have, till very lately, been extremely ignorant of them, and of that learning which investigates them. This is clearly evinced by the numberless suits instituted for the recovery of dormant tithes, during the last thirty years. And, on examination of old incumbents, who, from some few modern decrees in favor of the clergy, and the consequent augmentations of livings in their neighbourhoods, are better informed of the legal extent of their claims, it is observed that, from inadvertency, timidity, or habitual indolence, they yet acquiesce in their self-oppressions, yet continue the practice of signing terriers, not considering how far they are

These reasons
refuted.

Terriers.

justly descriptive of the *real rights* and dues of their churches, but merely as acknowledgements of their own receipts, the different payments for the same article, at different periods, frequently observable in these records, afford ample proof of this assertion. *In this light alone*, ought terriers to be viewed: they ought to be received as evidence only as far as they go, in point of time, and since these instruments are rarely found prior to the present century, it seems rather *unreasonable* for the courts to make them the legal foundation of compacts, which are positively *prohibited* by a statute of so much earlier date as that of 1571.

The records of the courts of Equity clearly shew that the clergy have successively signed terriers which they did not understand, and have given, in the language of the courts, *establishments* to moduses, of which they had as little comprehension. If vague presumption, is still to prevail, it would be adviseable for old incumbents, who have hitherto blindly assented to such unequal contracts, merely because their predecessors had so done, to annex this, *as the reason of their compliance*; and those, who from ignorance have received, and who from indolence, poverty, or *fear*, are yet inclined to receive such disproportionate and inadequate payments, instead of signing such terriers in future, to subjoin their protest against such payments as original, fair, real compositions.

Advice to the clergy as to signing future terriers.

It has been observed that the legislature interfered in support of the church-revenue in 1571—it then appearing to be in a state of rapid diminution from pretended moduses, prescriptions, &c.—In remedy of the evil, the statute of the 13th of Elizabeth, called “*The Disabling Statute*,” took place, which, among other spiritual persons, prevents all parsons and vicars from making any conveyance of the property of their churches, other than for three lives, or twenty-one years. But, notwithstanding the specious appearance of this law, there is not one in the books

The disabling statute, &c.

The absurdity
and injustice of
this statute.

more absurd and unjust; inasmuch as it appears to countenance, and may perhaps be said to have in some degree legalized up to the time of its date, that very injustice, which is the burden of its complaint. Whence, it is demanded, arose the necessity of such a statute? The idea on which it is founded is a false one. How had the clergy, who are only *tenants for life*, a right to *alienate* or *barter* any portion of their respective freeholds*? Was this ever countenanced or permitted in any other instance?—Apply this consideration to all moduses, and what are their foundations?

Question to im-
propriators.

A late publication on the abolition of tithes and reform of the church-revenue, supposed to be the composition of Sir F. Blake, asserts that—"the revenue, which the church is in possession of, was not granted to the sole purpose of supporting the clergy, but expressly for the four following distinct uses: for the poor one part, another part for the maintenance of the parochial clergy, another for the use of the monasteries†, and a fourth for the repairs of the church fabrics." Admitting this—the present position receives from it the strongest support.—Out of the mouths of their opponents the clergy draw their best vindication. If only *one fourth* of the tithe-receipt was the appropriate portion of the officiating minister, how came it that he had a legal power to alienate the *whole*? Hence also arises another question, strongly applicable to the author of this remark—viz.—What possible claim can he, and all other impropiators, advance to more than *one fourth* of the tithes of their respective

* See Bacon's Abridgment—tithes—mortmain—uses, &c.

† Third Edition, p. 60. This is a mistake: instead of monasteries, it was to the *bishop and his college* that one fourth was originally appropriated; and this division is said to have been prescribed by Simplicius, bishop of Rome, anno 472;—but when sees became well endowed with lands &c. the bishops, to allow a better provision for the parochial clergy, tacitly resigned their part, and were afterwards by canon forbidden to demand it.

parishes?

parishes? And yet, they annually pocket three, four, or five hundred pounds from a parish,—leaving (Oh liberal donors!) fifteen, twenty, sometimes thirty pounds, to be collected in the shape of small dues, as a just support for the laborious vicar;—humanely and honestly saddling the port upon the forced munificence of the parishioners, and surrendering the existence of the sacred edifice to the prompt bounty of occasional briefs.

But, to return to terriers—Of the second presumption, already quoted, it is asserted that, where there are land-owners resident in the parish, they constantly sign the terriers;—that every parish contains a number of leaseholders, whose interest in their farms is full as extensive as the incumbent's in his living;—and, as even the tenants at will, upon the principal farms, are rarely removed, they also have no inconsiderable interest against tithe-claims. It is also notorious that no set of men better understand their interests, or are more greedily tenacious of them. Surely then it is no unfair supposition, that in general they are not so eager to assign over as rights to the parson, whatever he may please to demand, and thus, out of compliment, subject themselves to new and perpetual payments. Was this indeed the case, it might with reason be expected that all tithes would be paid *in kind*, or by a *full and fair compensation*: but the contrary has been so fully demonstrated, that it was this which gave birth to the restraining act, before alluded to. However, it is the will and pleasure of those, who preside in the courts of equity to adopt a presumption directly the reverse, and—*stat pro ratione voluntas*!

That an individual should never incline to sacrifice the rights of his successors to his own interest; or that a whole body of parishioners should readily and repeatedly acquiesce in payments, to which the parson has no right whatever, are propositions that do not come within the boundary of common sense. They insult daily experience, and will not therefore

Reasoners
against the
rights of the
church in these
cases violate
common sense.

Tithes.

find credit with any but such as are interested in the belief.

As long as these are the sentiments, upon which the courts act against the claims of the church, it is surely unnecessary to caution the clergy against signing terriers, which profess to detail the tithe-dues of their respective livings: or to observe to our bishops, that, by the custody which they afford to such records, they are pickling rods for the backs of the beneficed clergy, and entailing ruin on their own patronage!

By parity of reasoning existing nuisances not illegal.

It may with as much reason be insisted that the numberless nuisances and encroachments, daily observable in every street in the metropolis, cannot be *presumed* illegal, because, if so, they would have been corrected and removed by the civil magistrate. The reasoning is parallel, from premises alike false.

Village-tradition and presumptions of equity.

If village-tradition is decisive of this point, the truth of witchcraft is fully established by the same testimony, as the validity of a prescription*.

By aid of the indulgent presumptions of *Equity*, nothing is so easy as proving customary money-payments, in lieu of all tithes in kind.

Although every *modus* is *supposed* to have been, at the time of making it, a fair and equitable contract,—a consideration which must of course give birth to objections of inadequacy and rankness, yet a late judge was accustomed to call a rank *modus* *rank nonsense*. He alledged that, in the times of superstition, the deluded people would have given any thing, or every thing, to the clergy; and that it therefore cannot be matter of surprise that many *ancient* customary payments are, even now, almost equal to the value of the tithe. On the other hand, it has always been maintained that, if the payments

* If testimony founded on village-tradition is so insuperable, the reader is referred to King James's demonology, where he will be highly entertained with an infinite variety of the most curious facts, supported by the most indisputable evidence.

are now of trifling value, *that*, in the first instance, is a strong ground to *presume* them valid*. Such reasoning

* As every composition is supposed to have been an *equitable* contract, at the time of making it,—if the *modus* set up is so *rank* and large that it beyond dispute exceeds the value of the tithes at the time of Richard I. such *modus* is *felo de se* and destroys itself. Black. Com. b. II. c. 3.

In the case of Chapman and Smith, here subjoined, Lord Hardwicke, speaking of time *immemorial*, said—"I do not mean *strictly* according to the *notion* of *law* before the time of Richard I." It is to be wished that he had told us what he *did* mean. His apparent meaning was to bid defiance to all professional rule.

The plea of *rankness* seems at present to be reduced to a very narrow compass. It is permitted to avail only where the *modus* applies to a particular article, as a lamb, a pig, or a calf:—respecting these, the question is still admissible—what was their ancient value? How long even this poor remnant of right may endure, is extremely problematical. The plea is thus far suffered, (say the men of law) because the price of these articles may be ascertained from history and ancient records.—And does not the same observation apply to the value of land? Do not the same records tell us both the value of the rental and price of purchase, and at the very same periods? Why then should not the same rule of decision be applied? Both the local and temporary worth of the animals and the land, must be supposed to have advanced *passibus æquis*.

The author of a late pamphlet, entitled "Tithes Indefensible," has thought proper to select this very particular—namely, the plea of *rankness* in objection to *immemorial* usage, as a proof of partiality to the church, on the parts of our courts of justice, and of oppression, on the part of the clergy. This position we combat, and are willing even to take issue on the whole sum of clerical grievances against the judicial department upon this single case.

CHAPMAN v. SMITH.

The defendant insisted on a parochial *modus* of nine-pence for every acre of marsh-land, except when sown with corn, grain, flax, or planted with *hops*, in lieu of all tithe of hay and pasture, and of all small tithes, except flax, hemp, and *hops*; and so after that rate for a greater or less quantity than an acre of such land; From an attentive perusal of the reporter (2 Vezey, 506) the statement of the writer is found to be a misrepresentation; instead of being decided in favour of the rector, it was sent to a trial at law. The Chancellor, Hardwicke, it is true, began his observations with some apparent acquiescence in these objections—1st. that this *modus* was not sufficiently proved, in point of *fact*;—2d—that, if it had been so proved, it was not so good in point of *law*:—yet, after much circumlocutory malversation, and

Tithes.

soning at once cuts up all objections!—Where the payment is very small, that smallness affords a presumption that it is of legal establishment; where it is very large, the people were deluded and imposed upon by the subtilty of the priesthood;—the priests had art enough to persuade the people into compacts to pay more than *fifty* times the value of their tithes!!

Every thing looks distorted, that is viewed through the optic of prejudice. These men assume in reasoning the double power of the microscope; they aggrandize and diminish at will, as best suits their purpose.

It may be supposed that, to ascertain what was the value of our present money at the conclusion of

and drawing together a huge mass of legal confusion, jesuitical sophistry, and pitiful *unprecedented* presumptions—he determined for the *modus*—or, in other words, turned it over to a jury. The lands in question were part of the Kentish marshes. The average rental of land in England was in 1544, no more than one shilling an acre; how then can a payment of nine-pence an acre be acknowledged as a *real composition*. Supposing such lands to have been unusually productive,—to obviate this, were adduced not only general proofs of the value, but also positive and peculiar evidence. The very lands in question had been valued at two shillings an acre, as appeared from several records, particularly from a survey taken in the conclusion of the reign of Hen. VIII. and produced from the augmentation office. Whatever local indulgencies such surveyors have occasionally shewn, common sense will not let us suppose that these would venture, in the face of such a tyrant as Henry, to value lands at only two shillings an acre, the tenth of whose most inferior produce had through ages been estimated at nine-pence! The pretended *modus* was laid in specific words, positively excepting *baps*.—This very exception evinced it to have been a mere personal payment, an agreement of modern date. It is well known that *baps* were introduced into this country in 1524—how then could a *modus* have existed for this article, during almost six centuries? And yet this vaunted judge decided the case, as far as he dared, against the rector. He would not give a direct decree against him, because justice stared him in the face too glaringly—because he feared the exposure of such a judgement in the house of peers: but he perfected the business by deputy.—A hint was sufficient.—He knew a jury would at the same time execute his intention, and shield him from the merited odium!!

the

the reign of Richard the first, would be a sufficient test of the validity of many moduses. Reason admits the justice and necessity of such a standard, and the clergy most earnestly pray for it:—but what say the courts of equity?—“No.—It would be improper—“ we cannot allow any given rule—the courts are the “ best directors”. And yet authorities are not wanting to shew the propriety and necessity of some such rule*. Blackstone requires the present value of the tithes, for which a modus is set up to be *ten* times, Littleton *fifteen* times, the amount of the modus contended for, in order to protect it from the legal imputation of rankness. The church would gladly receive either of these, or indeed any other decision as a rule, by which to estimate its rights. It requests only to enjoy what is allowed to it, with some portion of certainty and peace †.

No rule laid down—The reason.

Would

* Black. Com. Vol. 1. p. 167. 4to. edit.

Hen. II. Vol. 2. p. 86. 8vo. edit.

† An. Dom. 1177. In the 23d year of Henry II. the Black Book, containing the orders and rules of the exchequer was compiled; wherein among other things is mentioned, that for provision of the king's household from the time of king Hen. I. the officers of the king's household, reducing their victuals into an estimate of money, did value for a measure of wheat to make bread for one hundred men, twelve-pence; for the carcase of a fat ox 12 pence; or a fat sheep 4d; and for the provender of 20 horses 4d.

An. Dom. 1299. 27 Edward I. an act of common-council was made for prices of victuals to be sold at London, by consent of the king and nobility, viz. a fat cock for 1d. ob.; 2 pullets 1d. ob.; a fat capon, 2d. ob.; a goose 4d. a mallard 1d. ob.; a partridge 1d. ob.; a pheasant 4d.; a heron 6d.; a plover 1d.; a swan 3s.; a crane 12d.; 2 woodcocks 1d. ob.; a fat lamb from Christmas to Shrovetide 6d. and all the year after for 4d.

An. Dom. 1314. In the 8th year of king Edward II. it was ordained, and the king's writs were published for prices of victuals not to exceed as followeth, viz. an ox stalled or corne-fed 24s.; a grasse-fed ox 16s.; a fat stalled cow, 12s.; another 10s.; a fat mutton corne-fed, or whose wooll is well growne, 20d.; another fat mutton shorn 14d.; a fat hog of two years old 3s. 4d.; a fat goose 2d. ob.; in the citie 3d.; a fat capon 2d.; in the citie 2d. ob.; a fat hen 1d.; in the citie 1d. ob.; two chickens 1d.; in the citie 1d. ob.; four pidgeons 1d.; in the citie three 1d.;

Ascertaining the
value of money
would destroy
half the mo-
duses.

Would the courts condescend to ascertain the value of money at the period of legal memory, a certain rule might be formed, conclusive upon at least half the pretended moduses set up in litigation; but this is indeed a hopeless wish, as it would dry up an abundant source of professional emolument. Great is Diana of the Ephesians! Great and glorious is the uncertainty of law !!

Under such motives, may we not with equal propriety contend that the long-contested boundaries of empires ought not to be limited—that no territorial demarcation should take place between neighbouring kingdoms, but that in future, as heretofore, the numberless disputes arising from thence should be terminated by the *sword* alone;—that the slaughter of the human race should still continue to employ more than half the globe;—because the *trade of patriotism* demands such sacrifices !!!

Ready means of
doing this.

There are some, though perhaps not very certain means, of ascertaining the value of money at, or about, the conclusion of the reign of Richard I. prior to which period, as has been observed, all legal moduses are *presumed* to bear date. Bishop Fleet-

24 eggs 1d.; in the citie 20; A gallon of strong beer 1d. ob.; ditto of small ale 1d..

An. Dom. 1387. 10 Richard II. In the beginning of the year, at Leicester, 100 quarters of barley were sold for 100s.; but, in the middle of the next century, corn was sold cheaper.

An. Dom. 1454. 22 Henry VI. Wheat and other graine were in such plentie, that a quarter of wheat was commonly sold for 12 pence or 14 pence; of mault, for 16 or 17 pence at the most.

An. Dom. 1486. in the second year of Henry the seventh, wheat was sold at 3 Shillings the bushell and bay-salt at the like price.

An. Dom. 1491. 7 Henry. VII. Wheat was sold at London for 20d. the bushel, which was accounted a great dearth.—

An. Dom. 1553. in the first year of Queen Mary, at her majesty's coming to the crowne, victuals were so plentiful, that a barrell of beere was sold for six pence, with the caske, and four great loaves of bread for 1d; but 1558 corne rose to 14 shillings the quarter.

A. D. 1596. 37 Eliz. In Aug. Sept. Oct. and November, Wheat and Meal was sold in London at 10s. the Bushel.

wood

wood informs us that in 1240, 4l. 13s. 9d. was worth about 50l. of our present money: that, in 1234, thirty acres of land were held at ten shillings yearly rent, or four pence an acre: that in 1327, eighty acres of arable land were worth twenty shillings a year, or three pounds of modern money—that is nine pence an acre.—“In his chronicon preciosum, written “at the beginning of the present century, he has fully “proved 40s. in the reign of Henry VI. to have been “equal to twelve pounds a year in the reign of Queen “Anne;” and, as the value of money is very considerably lowered since the bishop wrote, we may fairly conclude, from this and other circumstances, that what was equivalent to twelve pounds in his days, is equal to twenty at present*.

In the reign of Hen. III. the salary of the chief justice of the king's bench was no more than sixty-six pounds thirteen shillings a year. The puisne judges, both of that court and of the common pleas, had 40l. a year each. Henry's confessor had sixty nine pounds, ten shillings and sixpence per annum. In 1573 Queen Elizabeth created the earl of Shrewsbury Earl-Marshal of England, during life, and annexed an income of 20l. a year to the office.

Salaries of the judges made to keep pace with the value of money.

The revenue of one of the principal law-officers at this period is perhaps more than equal to the total amount of the salaries paid to the whole of the distributors of justice, and all the other officers of government together, less than two hundred years since.

Such is the justice which lawyers, estimating their own labors, have procured for *themselves*!! They have made the increase of their own fees and salaries keep pace with the decrease of the value of money; but the income of another class of public officers, the clergy,—that pittance, which the sacri-

Not so with the clergy.

* Encyclop. Brit. Vol. 6, p. 415. Vol. 12, p. 213.

Specie is now thirty-two times less valuable than it was at the time the Spaniards first discovered America. Mod. Universal Hist. vol. 39. p. 214.

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Clergy compelled to receive old money-payments.

No equivalents given for assumed exemptions.

legious pillage of the state has left them—is not permitted to partake of the smallest augmentation. A judge, whose salary is enhanced to more than *fifty times its former amount*, unfeelingly pronounces sentence upon a poor vicar—to be content with an old money-payment for tithes, upon the visionary presumption of a *modus*—a payment which possibly many of his predecessors might have accepted, but into which they were deluded, intimidated, or betrayed. Admit the supposition, and to what does it amount?—To what, but that such, in its pretended establishment, must have been founded in fraud. No equivalent was given for the assumed exemption. It was a present accommodation to the parties; but not just, because not equivalent. Equivalency implies permanency*. Inattention to the uncertain proportion between the value and the denomination of money, has brought more disorder into Europe than will be readily imagined. To be a fair composition (and nothing less could in justice be agreed to by the patron, ordinary, and incumbent,) it ought still to correspond with the value of the tithes. With respect to the stipends of the clergy in early times, we read that five marks a year was decreed, in the provincial council at Oxford in the year 1222, to be a

* It is urged that *modus*es are often prescriptions for particular farms, and must be annually paid, whether the occupier does, or does not grow the specific articles: and that, by such compositions, the minister's income was brought to a certainty---that they would operate as a *give-and-take*, and therefore did no wrong to the church.

This, it is true, has in some cases been deemed *established* law---in others, it has been decreed, that a *modus* may die and revive.

However, the clergy contend that the wrong arose from this very certainty. Any fixed money payment, in lieu of an article which has ever been advancing in value, cannot be an equivalent.

It is a notorious fact, that lay-patrons often present with stipulations of *preserving* or *confirming modus*es:—infamous presentee!—dost thou add robbery to simony! not content with purchasing the church, dost thou pillage thy successors to pay for it!!

sufficient

sufficient salary for parochial curates. In 1362, it is said by Stillingsfleet, in his rights and duties of parochial clergy—that six marks were allowed to the parish priests. And it is the remark of Lyndwood and other authors that every article of life being extremely cheap, and the clergy not allowed to marry;—that learning being out of use, and few or no books wanted;—“even five marks were sufficient for maintenance and hospitality too*.” But *the bishops always claimed a right, from the first constitution of the church, confirmed by the decrees of general and provincial councils, to augment and moderate their vicar's stipends, according to the alteration of times.* And this practice was supported by the common law.

The year-books (40 Ed. III. Cas. 15. f. 28.) affirm that the ordinary may increase or diminish the vicar's portion, implying a direct contradiction to modern Equity, which, by its support of money-payments, denies a possibility of augmentation.

Vicar's salary might be augmented.

In Hen. V. time, their salaries extended to eight, and sometimes nine marks a year; which Sir Henry Spelman† computes to be equal to a present salary of *sixty pounds*. The alteration in the specific value of money is a point, which our courts of equity will not determine upon: there no longer remains therefore to the clergy, in most cases, any plea of *rankness* against a pretended modus—the most opposite and decisive of all arguments—that the payment set up is self-destroyed, carrying with it, in its present value, internal proofs of modern original.—Courts of equity are now avowedly unfavorable to objections of this kind: they will not decide upon them *now as formerly*, but send them to a jury.—The consequence is obvious!

Points the court will not decide.

Here behold another work of modern justice!!

There are many great authorities on record in support of the contrary practice: what then, it is asked,

* Lyndwood's Provin. Tit. de offic. vicar. f. 64.

† P. 153.

Precedents.

becomes of the doctrine of *precedents*, on which lawyers build so much in all other cases *? They place themselves in this dilemma;—either the courts have done wrong for centuries heretofore, or they do wrong now: most probably now, as the outcry against the church runs higher than ever. Precedent, with regard to principle, is an absurd rule of decision. Often ought it to operate as an example to deter, rather than a pattern to be imitated. But, if, like a favored dictionary, it must decide all cases, it is at least requisite to tack to it some portion of consistency.

The only instance in which the courts submit a point of law to a jury.

What possible wrong could be done, by deciding the point in question? Such judgment is not final; but liable to revision by the lords. On the other hand—the wisdom of the present times has discovered that, to submit a point of law (for a point of law it is) to the decision of a jury, uncontrouled, except indeed by a bias of general interest and an increase of popular prejudice, is most likely to do right between the parties! This practice must surely have been

* It is not persons or precedents, but *principles* that we must look to. No authority, no practice can render that right, which is in its nature wrong. Usage, in such a case, is no plea, as no human laws can repeal the immutable decree of truth and justice.

It is a legal maxim—*nihil, quod est contra rationem, est licitum*:—and further, that "*Law is the perfection of reason.*" But may not "*Lex est suprema ratio*" be convertible?—May it not be more properly construed,—"*The perfection of reason is the essence of law?*"—"*Customs* (says Sir Ed. Coke) must be "*reasonable.*"—but then comes the salvo.—"*This is not to be understood of every unlearned man's reason, but of artificial and legal reason.*" We have been furnished with artificial legs, artificial teeth, and artificial eyes;—it remained for the sagacity of lawyers to supply us with *artificial reason*.

"The laws of eternal justice being dictated by God himself, are superior in obligation to all human laws." Black. Com. p. 41. Again, p. 69.—"*The rule of precedent admits of exception, where the former determination is most evidently contrary to reason, much more, if it be contrary to the divine law.*" Hence it follows, as a necessary consequence, that fixed money-payments, which must in their nature eventually deprive the minister of his maintenance, which both reason and revelation demand, are customs that *cannot be legally supported*.

adopted

adopted from the custom of leaving *so much* to juries in cases of libel!

What has a jury here to do! There is no fact to be tried. The facts have been long since agreed upon. The decision can only turn upon a comparison between the ancient and present value of money:—a question ever, it seems, to be left afloat. No precedent is to operate here; consequently, no counsel can advise the clergy. The law is to be in every particular case just what the provincial attachments and prepossessions of any twelve men, who happen to form the jury, shall be induced to make it. Excellent jurisprudence!!!

If the law admits of moduses and money-payments, in absolute prohibition of tithes in kind, (unless every principle of reason and justice is abandoned) it should be at least controuled by the following considerations.

Considerations
that ought to
govern the ad-
mission of
moduses.
1st.

1st. No moduses should be listened to, unless supported by full proof of its existence prior to the restraining act; because, when that statute took place, *tithes in kind* being well understood as the *original legal right* of the church, it was the business of landowners to have had all former moduses publicly recognised by the clergy.

2nd. Very small money-payments should be considered self-condemned, as either inadvertently or surreptitiously established,—*unless long entered in the deeds and conveyances of the property claiming such prescription*: because such peculiar privileges, where they are well-founded, would of course have been noticed in the sales of such estates. This argument is supported, if it stood in need of support, by the lately-mentioned author of—"A proposal for the abolition of tithes"—a layman, most manifestly no friend to the clergy, though with them he eats the bread of the church—who says *—"one thing is perfectly clear, that in all cases of transfer, no-

2nd.

* p. 66.

“ thing is conveyed, that is not comprized in the
“ grant.”

3rd.

3rd. Where the payments are considerable, they
might be readily determined by the rule, above laid
down.

The church has
much to appre-
hend from all
quarters.

From the decisions of courts of equity, the church
has little to hope ;—from the prejudice of provincial
juries it has every thing to dread. It is from the
wisdom, the sensibility, and the integrity of parlia-
ment alone that redress can be reasonably expected.
Until some criterion be allowed the clergy, by which
they can obtain a rational judgement of the validity
of those exemptions, which are daily set up in oppo-
sition to their claims, all must remain in a state of
doubt, perplexity, and ruinous litigation. Until a
general commutation shall be established ; a rule, by
which to discriminate between the probable and the
false, the evident and the presumptuous, is loudly
demanded by the voice of justice and reason.

While the rights of the lowest orders of the com-
munity are clearly defended, and they participate
the protection of legislative wisdom,—it is surely
grievous and unaccountable that the revenue and
rights of the ministering servants of religion should
be left a prey to the rapacity of prejudice, the evasions
of cunning, the chicanery of law, and the *presump-
tions* of *Equity* ! The honor of parliament is highly
interested in the restoration and protection of their
violated rights !!!

CHAP. IV.

Instances in which money-payments and other moduses in lieu of tithes are countenanced and encouraged by courts of Justice.—Various kinds of tithes considered, particularly agistment-tithe.—Opinions of counsel on this subject, with strictures thereon.—The propriety of allowing exclusive courts for the administration of civil rights with respect to the clergy.—Observations on the practice of the present courts &c.—Consequences naturally resulting from the mutilated rights of the clergy &c. &c.

TITHES have been usually classed under three heads—viz. *predial*, *mixed*, and *personal*.

Predial tithes are such as arise merely and immediately from the ground; as, for example, *grain* of all sorts, *hay*, *wood*, *fruits*, *herbs*.

Division of
Tithes.

Mixed tithes arise not immediately from the ground, but from things immediately nourished by the ground, as all cattle and poultry.

Personal tithes are paid from the profits arising by the honest industry of man; being the tenth part of the clear gain, after charges and expences, according to his condition or degree are deducted*.

The more simple mode of division is into *great* and *small* tithes; but here too, law has introduced doubts and difficulties, at which nature stands aghast! The manner of dividing tithes may be altered by custom. In many parishes, hay and wood, although deemed great tithes, are paid to the vicar. We are sometimes told by our law-books that tithes are to be judged great or small, from their *nature* and *quality*; at others, they are said to derive their distinction from their *quantity*. In the instance of hops

* See Burn's Ecclef. Law, Vol. III. p. 387.
Black. Com. Vol. II. p. 24.

Tithes.

in Kent, it has been determined that they were *great* tithes; but when growing in *orchards* or *gardens*, that they were to be considered as *small* tithes. So that, whether hops are to come legally under the denomination of great or small tithes, yet remains a problem to be solved by some future decision.

For the sake of the unlearned reader—avoiding all professional subtleties and metaphysical distinctions—such tithes as are here necessarily examined with design to evince the prejudices, inconsistencies, and anomalies of the courts, shall be adduced in alphabetical order.

Aftermath
or
Aftereatage.

Various and contradictory have been the opinions concerning the tithes of *Aftermath*. Lord Coke* says it is freed from the claim of tithe by common law. Another great authority † declares such tithe to be due of common right, and that a modus or prescription alone can discharge it. Many other names of much law-note have attested the legality of the claim: yet lawyers have ever been too successfully industrious, in discovering ways and means of evading the payment.

Payment of this
tithe evaded.

Moduses have been allowed for this tithe, founded upon the consideration that the farmer made the first crop into *good hay*, and set it forth in *dry cock*,—which was deemed a degree of labor and cost more than he was bound to bestow. After the courts had made their ground good against the church thus far, they proceeded to release aftermath from the tithe-claim upon a consideration still weaker and more contemptible—namely—the having cut down the grass of the said crop, having shaken it abroad and put it into small cocks at their own charge, though in no degree made into hay ‡. Now, whatever law may say, common sense contends that both these customs cannot be strictly good. It can never be justice, to allow the same exoneration on conditions so very unequal.

Release of after-
math on ano-
ther ground.

The reason
absurd.

* 2 Inst. 652.

† 1 Roll. Abr. 640.

‡ Cro. Jac. 42.

So friendly have the courts been to the tithe-defaulters in this particular that, in cases where a modus is paid for hay, it is understood by the leading counsel of the present day that a positive prohibition has of late been intimated against all claims upon the latter-math or after-eatage; though without furnishing the least particle of reason * by which we may discover the justice of this decision. The few following arguments are suggested to shew the unreasonableness and injustice of it.

Determination
of the Exchequer
against tithe of
aftercrops.

The modus alluded to is paid for *hay*, not for *mowing-land*; and it is said—"one cannot be discharged from payment of one species of tithe, "by paying a modus for another †." Hence arises the necessity of observing the due distinction of tithes—a particular to which the reader's attention is requested.

Injustice of such
decision.

The position, on which this claim is combated at the bar, is that a man shall not pay twice in one year for the same thing; and that fog, rowen, eddish, or aftermath, as it is variously called, is only a relic of the hay-crop; yet such is not the import

* Mr. Mansfield, Dec. 15, 1786—says—"I am of opinion that no tithe is due for feeding of cattle on ground which has been before mown, and a crop of hay taken from it."

Sir John Scott, Jan. 20, 1787—says—"I am of opinion that tithe of these matters, after payment of hay-tithe, eaten by unprofitable cattle is not due. If there is any fraud upon the vicar, by mowing colourably, in order to protect the after-eatage, that would alter the case. This is my opinion upon this question, after looking into the reports—into modern publications, in which the effect of the decrees given by the court of Exchequer have been misunderstood, and after satisfying myself with respect to what opinions upon the subject the court of Exchequer has in late cases intimated."

Lord Kenyon, August 7, 1783—says—"No agistment tithe is payable in respect of pasturing any cattle profitable or unprofitable, upon the lands which have been mowed in the same year; notwithstanding the ignorant author of a late foolish publication has endeavoured to establish the contrary." And, he might have added,—notwithstanding this author (Bateman) has been for several years in actual receipt of such tithe, under the decree of a court of equity.

† Cro. Eliz. 446. Salk. 654.

L

of

Aftermath a
second crop.

Due de jure ac-
cording to all the
law-writers.

of the word ; it means not that which remains after the mowth or mowing, but an after or second mowth ; a crop arising from the growth of the latter blade, from the shoot which had given little or nothing to the scithe before. If this after-crop is mowed, where hay-tithe is paid in kind, its tithe is always paid ;—so say Burn, Blackstone, and all law-writers on the subject. In short, common law declares that tithes of aftermath are due de communi jure, if not exempted by prescription.

But, if tithe of this grafs be paid, when the crop is mowed, why not when eaten ? Can the act of the farmer do away the right ? Or can it, upon the lawyers own maxim, be just that land should pay twice in one year for an article, the same in *kind*—(hay)—and not once for each of two *different* crops ?

In many parishes, this article is called by its true name—the latter, or second crop. Thus too, the French name it “foin d’arrière saison.” A second crop it really is ; and poor land will not afford it. It is indeed only for an unusual state of cultivation, that this second crop can be taken by the scithe. And shall the industrious farmer be highly taxed for his extraordinary husbandry, and his indolent neighbour be encouraged by exemption from tax, even for the spontaneous produce of his lands ? Where is the wisdom or equity of such distinctions ? It must also be observed that, whether the lands be or be not greatly manured, the *nature* of the produce is still the same ; they can differ only in the *quantum* :—from what principle then does the full demand justly result in one instance, and its total remission in the other ?

No reason in the
exemption.

If the ewe bring a double produce, she pays a double tithe. If the cow has two calves, she pays tithes for the two. If the sow happens to farrow in the parish of A—— three times in the year, the tithe of her pigs is each time due of common right to the vicar. It is the tenth of the annual produce, whether afforded all at once, or by renewal, that the church

The clergy en-
titled to the
tenth of the
annual produce.

church is entitled to. It is from the whole increase of the earth, whether it be received by the occupier at twice or thrice in one year, or once only in five or ten years. The duty recurs as often as the bounty of Providence is bestowed.—Thus Blackstone says—Blackstone's definition. tithes are the tenth part of the increase yearly arising and *renewing* from the profits of land. Hence it is that gardeners pay tithes of all their various crops, however often renewed *. But hay and the after crop of hay-land,—when severed by the mouth of the beast, instead of the scythe—are tithes totally distinct, often due to different claimants;—How then can a modus for hay affect agistment-tithe? Nor can this be deemed a tithing at all excessive in this article. The soil of an orchard, sowed with any kind of grain, pays tithe of the grain to the rector, and, at the same time of its fruit-trees to the vicar; because they are of different kinds. The sheep, when shorn, pays tithe of wool; but, instantly after shearing, there commences an agistment tithe, if it be slaughtered or sold out of the parish before the next shearing time. Thus also the same corn-land pays two tithes in one year for different crops,—as wheat and turnips, or peas and turnips. In the case of Swinfen v. Digby, the court declared that where land is sown with turnips, after the corn is cleared, and fed with sheep and barren cattle, that tithe shall be paid for such turnips †: so in the case of Coleman and Barker, the plaintiff demanded tithes for the depasturing of sheep on turnips;—The defendant contended that the sheep paid tithes of wool, and that tithes ought not to be paid twice: But the court agreed, that it was a *new increase*, and decreed that the defendant should go to an account ‡.

Modus for hay cannot affect agistment.

Swinfen v. Digby. Coleman v. Barker.

Hay and agistment are two tithes full as distinct as corn and turnips: and, should it be ultimately settled that either a modus, or one payment of this

* Bunb. p. 10.

† Bunb. 314. pl. 399.

‡ Gilb. Eg. Rep. 230.

tithe in kind, is to cover all land that is mowed for the whole year, the consequence will be that the graziers will skim the scythe over most of their lands, or at least will not any longer manure and expensively cultivate particular small parcels for mowing; but will mow three or four times their present quantities, for the purpose of protecting so much more from agistment-tithe. We now observe that, whenever they think it advantageous, they eat their meadows until the tenth of June, instead of the tenth of May, which greatly lessens the value of the succeeding crop of hay.

Consequences of this exemption.
Observations on this kind of crop.

In the best grazing counties, mowing lands afford three crops in the year—viz.—spring-eatage, mowing crop, and after-eatage or after-mowth. Men at the bar, totally ignorant of agricultural management, have, in the way of *their trade*, loaded the latter with much complicated refinement,—pretending, among other sophistries, that it is not a new crop, but a *remnant* (perhaps a *revival*) of the old one. The truth is, that grass springs like the lopped branch of a tree, which puts forth many shoots from below its wound. But, admitting this assertion, what then is the hay-crop more than a revival of the spring-eatage? And shall the impropiator, in bar to the vicar's rights, be at liberty to select the middle crop, in order to prove it meadow law *? May not such land be more justly denominated *pasture*, notwithstanding it is once mowed—as it is grazed during *four fifths* of the year? The fog, or after-eatage, is considered as one third of the annual produce; the spring-grass, with the wintering, if it be early rich land, is another third; if these then are to be exempted from agistment-tithe, the clergy have tithe only of one third of the produce of such lands!! It happens too that warm fertile pastures, particularly

* Is this consistent with the determination—that tithes are properly due to such clergy as have the cure of souls, in the parish where they arise? Wood's Inst. 161. 2 Rep. 411. 4 Rep. 13. 14. Degge Parson's Com. 214.

in wet summers, invert the order of this claim, affording large quantities of rough four grafs, which the cattle will not eat. This, of consequence, is mowed.—The grazier has already accounted with the vicar for the agistment-tithe.—The improprator now steps forward for the tithe of the hay.—Will the pleaders in equity tell us, that in reason and justice he is not entitled to it?

Notwithstanding the distinct nature of the two tithes, it has been *lately* allowed to defendants, whenever they could muster a *prima facie* modus for hay, to extend it to agistment * pleading it to be paid for grafs, however consumed, with no other proof than that agistment-tithe never was paid. It never was paid, because, being of no serious value, it was never claimed. It is a tithe of modern acquisition, and probably neither noticed by the parson, nor thought of by the parishioners, till the time of such pleading. But how then could it have been in contemplation, upon the original legal establishment of such hay-modus! The injustice and absurdity are too flagrant.

Simonbourn-
case.

Let us set aside the *intimations* of *Equity*, dismiss the unstable opinions of the long-robe, and suffer common sense to speak;---the point is at once decided; we are instantly informed that the grafs-lands in question cannot be generally and arbitrarily termed either meadow or pasture; but that, as long as they are depastured, they must be considered as pasture, and when mowed, as meadow-land.

These professional subtilties and evasions of the bar are only, but then easily, to be obviated and detected by recurring to first principles---to the original right. Hence advances sacred Reason, enquiring---where, under all such subterfuges, is the expected *oblation*?—Where the *grateful offering* of the tenth of our increase to the supreme being?—Where that just and necessary maintenance, to which the clergy are indisputably entitled??

* As in the Simonbourn-case, MSS. report.

Agistment-
tithe.

The full enquiry into the tithes justly arising from the after-crop of grass-lands has already, in some degree, introduced the consideration of agistment-tithe.

Agistment * is the keeping or depasturing of sheep, and of any kind of cattle, whether beasts or horses; and the tithe of agistment is the tenth part of the value of the keeping or depasturing such sheep.

This tithe is not due for the cattle, but for the produce of the ground †, on which the cattle are depastured,—and due of common-right; because the grass which is eaten is *de jure* tithable ‡, and must have paid tithe, if cut when full grown.

Agistment-tithe § has this peculiar difficulty attending it, that it cannot be taken in kind; for as it is no otherwise cut or served than by the mouth of the animal, together with the other nine parts, and consumed at the same time, the vicar can only receive the value of it.

This demand of a tenth of the pasturage of cattle, otherwise unprofitable to the parson, has, from the numberless inclosures and improvements of late years, become a claim of serious value in many parts of the kingdom; but has hitherto been too little regarded by the clergy, and is now obtained but in a very small degree, and in all instances with uncommon difficulty.

Agistment a
valuable tithe
much neglected.

* 3 B. E. L. 432. Willis and Hervey, In. 9 Geo. III. 573.

Bateman and Aistrup, E. 14. Geo. III. 659.

By these cases, the law upon agistment-tithe is boasted by modern reporters to be fully and unequivocally determined. “The names of Willis and Bateman (says Reyner. in his preface) cannot but be mentioned much to their honour, for the service they have been of to their successors, as well as to themselves, in causing new and important questions respecting the subject matter of tithes to be *unalterably settled*.” This *unalterable* has been, some years, altered,—and this *settlement* again unsettled; with how much reason or justice, these pages are intended to point out.

† Underwood and Gibbon, H. 2. Geo. I. p. 132. 3 B. E. L. 435.

‡ L. Raym. 137.—2 Salk. 655.—2 Inst. 651.

§ See Burn's Eccles. Law, Vol. III. p. 445.

Many and violent have been the clamors, to which this claim has given birth. A northern baronet, already quoted, calls it "a bare-faced innovation." With submission to the liberal writer—it is by no means an innovation. There are few parishes, which are not in the habit of paying *something*, in some shape, on this account: and was it not so, it is a demand supported equally by reason and justice.

Not an innovation.

The general outcry of modern times against agistment-tithe does not arise because not of right strictly due, but because, it should seem, the clergy had almost wholly omitted to claim it, till the frauds of the people, in all other tithe-payments, compelled them to insist upon their neglected right in this. Certain it is, that the grant of the tenths of the produce of the earth, as a maintenance for the church, directs the grazing farm as fully as the tillage-farm to pay the tenth of its value; but here the fraudulent ingenuity of the graziers steps in to protect the pocket. Were their lands regularly joisted, it would be easy to ascertain the tithe, which, for that reason, they will not admit; but, in order to confuse and perplex the vicar, not only mix their stock, putting profitable and unprofitable cattle together, but often vary the number of each. At one time, they greatly overstock; at another, they have nothing in particular lands for weeks together. In warm moist forcing spring-weather, they stock their meadows, or fresh-rank pastures by day, but remove the cattle every evening, as their filth and couching through the night, they say, would destroy more of the crop than their day's consumption. Thus it is rendered impossible for the vicar to state such an exact account against them as the law requires.

Reason of the clergy making the claim of it.

Uncertainty of stock.

The law now tells the farmer that cattle, bred for his own *future* profitable purposes, shall not be subject to this tithe, because they are *intended* to pay hereafter a different tithe.—But who is competent to decide upon the future intention of the owner? Thus encouraged, he runs his young cattle two or three years

Tricks to evade
payment.

years in the parish, paying no tithes, under pretence that they are to be profitable to the parson *hereafter*, being bred for the plough or pail. The oxen and horses are just shod, and put twice or thrice in the gears, and then sold. The heifers are perhaps permitted to calve, but the calves, being of less value than the milk, are immediately destroyed, where they pay tithe in kind; otherwise, they are driven with the cows to the next fair.

How liable to
tithe.

The law on this
subject.

For these tricks we are to thank modern *Equity*. Such pretences, we are told were heretofore inadmissible. All beasts not actually yielding milk, nor employed in husbandry were accountable to this tithe from the time of their being weaned till they became profitable in that manner, or by bearing young, or were killed or sold out of the parish.—The general tenor of tithe law says the same.—Tithes arise annually and are to be annually paid, where the article can be thus accounted for, and there is a customary value in every neighborhood for the annual keep of such beasts, and unless this keep, these years of increase and improvement of their young cattle be thus annually acknowledged, it is asked of these dealers in equity—When, or at what period of the beasts existence, are they to be accounted for? The creatures are to pay *hereafter* in milk and young—*hereafter*! They are *now* actually and daily paying their breeder for their sustenance; and shall the new milched cow, which has acquired all her growth and value in this parish, pay no more to the church, than the animal of the same kind brought into it but yesterday? How, too, is it possible for the clergyman to ascertain, through an extensive parish, in large pastures with a numerous stock, what are retained and what sold off at the end of three or four years?

Unreasonableness
of the excuses
made.

When a parochial modus exists for calves or lambs, it is always pretended that they were not taken from their dams till very late in the year, which almost wholly removes the claim of agistment tithe; though the fact is that they are taken from them, commonly indeed

indeed destroyed, as soon as dropped, especially the calves of grazing cows. By this the cows are little backened in their feeding; and the clergy are said to be fully paid by an acknowledgement for such calves, although, during their time of gestation, they obtain more than half their fat. Thus too the wether sheep, hourly acquiring two profits to his owner, becomes perfectly fat by the time he is fit for shearing. If he be sold, as is commonly the case, with his coat on, the parson, where agistment-tithe is not demanded, receives no acknowledgement: if he be clipt, our courts of *equity* say the payment of the fleece alone, much the least of these tithes, is to content him. Is there any principle of Equity in these cases?

How the clergy are defrauded of this tithe.

When goods are nearly or fully fat, the grazier often removes them, and brings others into the same lands, which require two or three months feeding to fit them for the slaughter-house. How can this be detected, unless the vicar be permitted to *put his mark* upon them? These and many others are the frauds in practice, which the parson cannot *legally* prove. It is indeed impossible. Yet *Equity* demands this impossibility;—requires the clergy to adduce direct, minute, and positive proof of particulars, which the farmers know they cannot become acquainted with.

Impossibility of the clergy ascertaining their rights.

Whence is it that all these cavils, evasions, difficulties are to be opposed to the demand of agistment-tithe? Why thus bestow a bounty upon pasturage, a mode of cultivation, which, as it affords no employment to the peasantry, is highly inimical to the population of the country?—And this too, in diminution of the credit, and to the wrong of men, who have undertaken a most momentous charge as well for the service of the public as for the honour of God!!

The costs of following an agistment-farm are trifling; the necessary expences of the corn-farm will double its rent; and yet the latter is taxed beyond all bearance, while the former pays little, and often nothing. Indolent, expenceless, depopulating pasturage is to be indulged in exemption,—while tillage, the

The courts throw difficulties in the way of agistment tithe.

M

parent

parent of population, the first, best interest of all countries, meriting every encouragement, entitled to every support, is doomed to bear the whole burden of this tax!

What plea can be advanced for this arbitrary distinction—what reason assigned for this impolitic measure?

Under the peculiar lenities, which law has attached to this tithe-claim, it is determined that coach-horses, hunters, and racers shall pay no agistment-tithe.—Strange! are we to sacrifice to our Creator from the necessities of life, but to offer no portion of our pleasures and luxuries * to the due support of his honour and service!

Agistment tithe
demands pecu-
liar consideration

Agistment-tithe, being of so complex a nature, and a tithe which must be paid in money, surely in these times of general fraud upon the church-revenue (should the main design of this treatise, viz. an universal commutation in lieu of tithes, be disregarded by the legislature) may justly demand some portion of public consideration! Would it not be sound policy—at the same time encouraging the peasantry by the promotion of agriculture, and rendering justice to the church by the ascertainment of at least one of her claims—to specify a pound rate, by which it

* See 1 Bulst. p. 171. Poph. 126. 1 Roll. Abr. p. 646. Gibs. Cod. p. 682. Bunb. p. 3. Rayn. p. 132.

The case of Thorpe and Bendlowes reported in Burn Ec. L. seems to have hinged upon defendants having applied his coach-horses to profitable purposes: but if not, it adds one more to those many contradictions which we wish to expose.

By the 25 and 29 of Geo. III. very heavy parliamentary duties are demanded for horses and carriages of every kind, even carts, that are *ever used* for pleasure.

A tax too heavy can scarcely be laid upon horses kept for pleasure. These animals daily prey upon the bread of the poor: and there are many persons, in circumstances too slender to support this luxury, who, by a heavy tax suddenly laid on, would be enabled to drop it without fancied disgrace. In the same hour, many thousand hands—coachmen, grooms, stable-helpers, &c. would be restored to arts, manufactures, and agriculture.

should be accounted for? How absurd—how inconsistent is it to leave the traversing and measuring the quantities of each large pasture, the numbering and valuing the cattle-gates, in an extensive grazing parish, as a daily task to him, who is at the same time expected to be employed in attending the sick, visiting the afflicted, conciliating the angry, advising the thoughtless, and cheering the afflicted! And yet, this is the drudgery imposed on a class of men, whose education, profession, and habits of life are alike repugnant to such employments. The clergy are reduced to this mortifying dilemma—they must either degrade themselves by such employments, or literally starve in what are (ludicrously, no doubt) denominated their *livings*!!

The habits of the clergy ill adapted to look after the business of the farmer

Dilemma incident to the clergy.

An important instance of uncertainty in law, and of degradation in the rights of the church, is manifested in the modern enclosures of common lands.

Many of our judges have been no friends to the claims of the church;—the disposition of the present chief in the K. B. may be collected from his written opinions and official *directions*, applicable to such claims. Under his auspices, it has been decided that lands, good in their own nature, should have seven years exemption from tithes, merely on account, as it seems, of the expence demanded for fencing, and ploughing. But, as the necessity of these, cannot alter the *nature* of the land, neither can they in reason be deemed a sufficient ground for exemption*, since ploughing, and some additional fencing, with the expensive addition of manure, are essential in the obtaining of a due corn-crop, even in the best old tillage-farms.

Barren land.

Not reasonably exempt from tithes, unless strictly barren.

The additional misfortune to the clergy, already suggested, is that this point is likewise to be determined only by a jury of men, from whom no equitable decision can, in the nature of things be expected; and frequently by a judge, possibly a dissenter,

Decided by a Jury.

* Bur. Ecc. Law, 465.

and as personally adverse to the claims of the church, as if himself and all his progenitors had been monopolizing graziers or tithe-disputing farmers, from time immemorial.

It may be proper to state the particular clauses in the 2 and 3 Ed. VI. c. 13. and some of the leading law-authorities on those statutes. By this statute it is enacted that "all such *barren*, heath, or waste ground, other than such as be discharged from the payment of tithes by act of parliament, which before this time have laid barren, and paid no tithes, by *reason of the same* barrenness, and now be or hereafter shall be improved and converted into arable ground or meadow, shall, after the end and term of seven years next after such improvement fully ended and determined, pay tithe for corn and hay growing upon the same. Provided that if any such barren, waste, or heath ground hath before that time been charged with the payment of *any Tithes*, and the same be hereafter improved and converted into arable ground or meadow, the owner thereof shall during the 7 Years, next after these improvements, pay *such kind of Tithe* as was paid for the same before the said Improvement."

Proviso &c.

If in it's state of nature it had yielded wool and agistment tithe, and the value of these should be paid during the 1st 7 years.

If then in its state of nature it had yielded wool, lamb*, and an agistment-tithe, the value of these should still be paid during the 1st. 7 Years that such ground is put into tillage, or laid down to meadowing; and not the customary, but the improved value; 19l. the additional value, resulting from the owners act of inclosing, grubbing &c. from *whose neglect alone*, it heretofore arose that it was not fully productive as pasture land. But neither the courts nor the clergy seem to have ever paid any regard to this consideration.

If not barren in its own nature, it is not within the meaning of the statute.

If the ground be not suited for tillage, yet, if it be not *in its own nature* barren, it is not within the

* See Burn's Ecc. Law.
Wool and Lambs, 3. 408.

meaning

meaning of the statute.—8 G. If a wood be stubbed and grubbed and made fit for the plough and employed thereunto, yet it shall pay tithe presently, for woody land is in its nature fertile *.

Where lands are full of thorns and bushes, from time whereof &c. and they are grubbed up and made meadow or arable land, tithes shall be presently paid thereof, notwithstanding the stat. of 2d. and 3d. Edw. VI. ch. 13.; for those lands were not naturally barren, but became so by *negligence* or *ill husbandry*; and the statute extended only to barren land made good by industry †.

Where lands are full of thorns, &c. and made meadow, &c. it pays tithes immediately.

Fenny land, afterwards drained, is not exempted by the act.—Land which bears *broom* is not within stat. 2d. Edw. VI. for it is not *barren* land, and therefore if converted into *arable*, shall be chargeable with tithe ‡.

Fenny lands, &c.

If a man, at a *great expence*, gains land from the *sea*, which before was marshy and sandy land, and covered with salt water, and afterwards converts it into arable land; he shall pay tithes presently, because this land is not barren of its own nature, but only by accident, by reason of the sand and salt water overflowing it§.

Land gained from the sea.

Barren lands to be exempted from tithes within the true meaning of stat. 2 Ed. VI. must be such land as is *barren, suapte natura*, and on suggestion for a prohibition to a suit for tithes for such land, it must be alledged to be barren *suapte natura*||.

No land exempted, &c. but what is barren by nature.

After such a clear body of evidence as to what is or is not legally accounted barren land within the meaning of these statutes, how slumbered the justice due to the clergy in the case of Starkie and Manifold **?

It

* 2 Inst. 656. Bunb. 159.

† Cro. Elvy 475. pt. 3.

‡ Roll. Rep. 39.

§ Bulstr. Vol. III. p. 156.

|| 2 Raym. 991.

** In the Court of Session—Chester 14th Apr. 1783 Starkie v. Manifold—to recover corn-tithe from a new-enclosed

Wrongs in the power of the crafty landholders as to barrenizing Land, &c.

The stat. of Ed. VI. was made to effect the due payment of tithes and not for the benefit of agriculture.

New enclosed marsh-lands immediately pay tithes.

It appears, from the decision of this case, that crafty landholders may transfer, as often as opportunity serves, their attention from one spot of ground to another, equally fertile by nature, but which they have the address to term *barren*—and they as completely evade the dues of the church, as if they never had existence either from divine or human authority. Evidence from the most upright and intelligent persons is of no consequence—an honest, impartial jury, and a learned and conscientious judge shall pronounce the mystic spell of law, transform a paradise into a desert, and prove, fatally to the parson prove, that allegations of fertility are convincing marks of barrenness.—But, to be serious! The 2d and 3d of Ed. VI. were enacted to effect the due payment of tithes, and not for the encouragement of tillage. The land in this case had been hitherto barren, *quoad* agriculture, merely as many fertile commons are, from the neglect of man; but the Chief Justice laid great stress upon the expence of enclosing; and yet, a much greater man (Coke) in the case of *Sharrington and Fleetwood**, admitted that new enclosed marsh-closed common, in the parish of Waverham, in the county of Chester.

This common was gorse or furze-land, which is highly capable of tillage, and known uniformly to produce good corn, when *grubbed and cleared*. It was shewn by the evidence of nine or ten very intelligent and respectable characters, that the land in question was full as good pasture as the old enclosures—that it wanted *nothing*, but *enclosing*, beyond the usual expence and labour of preparing lands for tillage, to render it at least as productive as the oldest enclosures—that immediately when fenced, *without any other expence*, it would produce to the respective owners a clear rent of twenty shillings per stat. acre. It was also shewn, and not attempted to be denied, that the corn-tithes of one township in this parish, which had usually been more than 50l. a year, were reduced to 15l. owing to the *decrease of tillage in the old land*, the farmers now tilling little but the allotment land. Notwithstanding such evidence—Ch. J. Kenyon advised a verdict in favour of the exemption, and the jury found accordingly. Thus the rector, during seven years, was starved by the very bounty of Providence, which enriched his parishioners. In 33d Report.

* 2 Inst, 656.

lands should immediately pay tithes, though such lands are highly unfit for tillage and demand a very extraordinary expence, in draining and manuring, as well as fencing.

In the case of Stockwell and Terry*, 14 July, 1748—it was held by lord Hardwicke (never deemed friendly to the church)—that such land only is within this act of exemption, as above the necessary expence of enclosing and clearing, requires also expence in manuring, before it can be made proper for agriculture: that this land was proved to be worth *two shillings* an acre before improvement; and though chalking might be necessary after three crops of corn, so might it be in the course of common husbandry. The question is what may be necessary for the *first* crop. The whole expence of such enclosures is not to be thrown upon the first seven years, because the benefit is to continue for *ever*. He decreed tithe to be paid, on its being proved that the land bore better corn than the arable land in the parish, without any extraordinary expence of manure.

Under such varying decisions, what becomes of *precedent*, of which law-authorities affect to be so fond; or rather, be it asked, where is sacred *principle*? where is that prompt regard to individual right, which ought to be the basis of the profession? Where is their boasted *reason*;—where that honest instinct of propriety, the natural consciousness of right and wrong? Or, are not these queries technically unintelligible?

At a time when the bias of all determinations of law and equity are so strong against the clergy, when their *ancient* rights are invaded and totally overlooked in all *modern* improvements, which, if attended to, would in a degree restore the balance of justice, it is proper that something should be said on canals.

Canals are now cutting through many of the finest parishes and richest lands of the kingdom, and it will

* Reyn. p. 445. Burn. Ecc. L. Vol. III. p. 392. 5th Edit.

not surely be denied that the land so destroyed should be rendered *some way* accountable for tithe, poor-rates, land-tax, and all other parochial assessments; otherwise, a new burden arises to the rest of the parish, and in favour of adventurers, who give no more than a common price for it, though they avow the expectation of having it free of all taxes. The clergy are, at all events, sufferers by them. The land is destroyed and absolutely removed from their claims, without remuneration or acknowledgement; while, on the other hand, extra taxes are charged on their tithes and glebes, as well as the other parish-property, to make good the deficiencies thus created. Their revenues are reduced, and their imposts augmented: they are first robbed, and then taxed in consequence of the robbery:—while redress is far beyond their reach.

It was thought proper here to throw out these few short reflections as hints for public consideration!!

Cheese.

Where tithe milk is paid in kind, no tithe cheese is said to be due; and where tithe cheese is paid in kind, no tithe milk is due. The custom of the place is to be observed*. By a constitution of archbishop Winchelsea, the tithe of milk shall be paid in cheese, while the parishioner makes cheese; but in the autumn and winter it shall be paid in kind; unless the parishioner makes a competent redemption, to the *value* of the tithe and the *benefit* of the church†. But the canon is generally over-ruled. In many places, they pay milk in kind all the year; in others, they pay only cheese. The courts seem at last to have resolved that tithes shall not be paid both of milk and cheese, though, certain it is, that many vicarages are *endowed* with both these articles.

Payment of the tenth cheese in one part of the year, for example—from May-day until the *last* of August, has been admitted as a good prescription

* Deg. p. 2. c. 6. God. 392.

† Lind. 124.

for the discharge of tithe-milk for the whole year*. Another reporter declares it *valid* if this modus be paid only to the *first* of August. Are not such decisions direct contradictions to the just maxim, which says a part shall not be paid for the whole of any tithe?

Corn is of common right to be tithed by the tenth cock, or sheaf: but custom is generally suffered to supersede common right.

In the payment of this tithe, the best support of the church, various have been the encroachments upon the rights of the clergy, under the plea of local custom. Even in this, the only productive article left to them, the late determinations of the courts have been that—if they will have a *tenth*, they shall take it in a crude imperfect state; or else, be content with a less quantity. By such decrees, many parishes have been induced to set up customs of giving a part for the whole—the eleventh, twelfth, or thirteenth shock or stich, instead of the tenth. But how can this be denominated a tithe?—Yes, say the pleaders in equity, the farmer is not obliged to set it up in shocks or stiches—is not compelled to give his labor, as well as crop;—and therefore for such extra service, such *supererogation*, the parson ought to receive less of the article.

The clergy, as hereafter will be shewn, having compassionately forborne in general to claim personal tithes, surely so small a degree of personal labor, as is requisite to give them their predial tithes in their full value, might be reasonably expected, as a claim of justice!

To give the tenth land of corn, instead of the tenth sheaf or shock, beginning with that land, which is nearest to the church, has been adjudged a *good custom*; notwithstanding it was alledged that the occupiers, knowing which would fall to the share of the

* 1 Rol. Abr. 651. 1 Cro. 608.

Tithes.

[The remedy of
the Clergy—a
jury!!

parson, did not till, manure, or even *sow* it, as they did the rest. This fraud, said the court, as it does in all such pleas, may be remedied by an action at common law;—that is—by a jury of men avowedly *interested* against the claims of the church. But is not such a custom void of all reason, at least all other than *legal reason*, when it may always be presumed that the farmer will not bestow the same industry upon the parson's portion as upon his own? And what can be more difficult, not to say impossible, than to state and compare the *degrees* of care taken with those that may be legally required? And, if due care is not taken, there remains no remedy to the clergy, but such as few can afford to purchase, and by which none are ultimately compensated.—A remedy always as vexatious, and often more oppressive than the injury.

How does such a custom accord with the first principle of the law of tithes? The offering to the church is to be the *tenth part of the fruits of the earth*; and this is a tenth, not of the produce of the land, but of the *quantity of land sowed*; a tenth, not of the bounty of God, although indeed, an ample portion of the ingratitude of man.

Frauds in setting
out, &c.

Stats. 2 and 3 of
Ed. VI. no re-
lief to the Clergy.

Before the parson collects his corn-tithes, among other frauds, if there be (as there generally are) shocks injured by crows and vermin, such are either set out, or afterwards exchanged, for his portion; and how has he the means of detecting this fraud?

It is indeed enacted by the 2 and 3 of Ed. VI. c. 13, —“that if any person shall carry off his tithes of corn, hay, or the like, before the tenth part is duly set forth, or agreement made with the proprietor; or shall hinder the proprietor or his deputy from viewing or carrying them away; such offender shall pay double the value of the tithes, with costs, to be recovered before the ecclesiastical judge:” but such appeals are progressively and eventually so very expensive, that they are rarely resorted
ed

ed to*. There is also a summary mode of recovering any tithes withheld by quakers, under the value of ten pounds seemingly afforded by the 1 G. st. 2. c. 6. which extends the 7 and 8 W. c. 34, concerning tithes, to all customary payments due to clergymen†. But the good intentions of these statutes are frustrated by the defendants pleading some false modus or prescription, which questions the right; a point which the common law will not suffer to be decided but by the verdict of a jury. As to the evidence necessary to support such plea, it is sufficient, if the witnesses declare only that they *believe* it, or have *heard* it, or that there is a common fame of it‡.

Courts of conscience, and other modes of proceeding, requiring little time and expence in the recovery of debts, have from time to time been appointed in behalf of the rest of the community, and the people are now enjoying the benefit of such establishments; but the clergy alone are to be harrassed by every delay that can be devised, and oppressed by every expence that can possibly be imposed. Even the laborers in the tin-mines of Devonshire and Cornwall are allowed an exclusive court for the administration of civil justice,—are by charter privileged from suits of other courts, unless in pleas of life, limb, or real property, and can only be impleaded in the Stannery court. They sue and are sued only in this. The same reason more than equally applies to influ-

Other bodies of men allowed exclusive courts.

* Tithes of any value are commonly sued for in the courts of equity, where no penalty can be recovered. Burn. Ecc. L. Vol. III. p. 501.

† These two acts are to be taken together as one law. They were intended, not to serve the clergy, but for the benefit of the quakers, to prevent their being liable to expensive suits for refusing to pay tithes upon scruples of *conscience*; and yet they oppose it with much malignity. Had it even a free and full operation, it could afford little benefit to the clergy—as the justices, who compose the tribunal, have a direct local interest in defeating their claims.

‡ Gibs. 699.

ence the legislature to appoint a peculiar court for the clergy—viz—“ that they may not be drawn “ from a business, which is a *great national benefit*, to “ attend law-suits in Westminster Hall.” The same plea was assented to, in establishing the privileges of Universities &c. our Universities. The king’s courts in all civil actions, have no jurisdiction over a scholar or matriculated person, except in right of freehold. These exemptions were granted that the students might not be distracted from their studies by legal process from distant courts, and other *forensic avocations*. Privileges of this kind are of very high antiquity.—They are enjoyed by most of the foreign universities.

It is true, the universities and miners are confined to particular spots, while the clergy are dispersed over the whole kingdom; to whom therefore no local court could afford the requisite benefits. But, for the mere purpose of obtaining in their disputes that honest evidence which an open court alone can educe, might not our justices of assize, in their several circuits, take evidence offered upon all pleas between the clergy and people; and such evidence be afterwards transmitted to the court of King’s Bench, to be weighed and decided upon by a London-jury? Some such plan is more particularly necessary, when we consider the circumscribed power of the ecclesiastical courts. These have no jurisdiction to try the *right* of tithes, unless between spiritual persons; between spiritual men and laymen, they can only compel the payment of them, when the right is not disputed*. Hence it is that tithes are seldom sued for in the spiritual court.

Gardens. The tithe of *gardens*, which in these days would be of considerable amount, is in most parishes covered by some very small money-payment—as a penny or twopence, in some cases as high as sixpence, very rarely more. That such payments should at first

* Tithes were anciently recoverable in the county-courts, where the expence was trifling and the determinations speedy. See Burn. Ecc. L. vol. iii. p. 478.

have obtained, is easily accounted for;—gardens being then of very trifling extent and little cultivated, mere gardens of herbs, producing scarcely any thing more than “mint, anise, and cummin;”—Moduses allowed respecting them. articles of little value, and hardly possible to be taken in kind. It is well known that there were no such grounds, as those now called kitchen-gardens, in England, even in the beginning of the sixteenth century. In 1509 there did not grow in this island either cabbage, carrot, turnip, or other edible root; vegetables were imported from the Netherlands. And yet the courts have decreed for the validity of such payments as *moduses*; although, to be legally such, they ought, by *their own rule*, to have existed from the year 1199. But, regardless of this consideration, they are adjudged to be good customs against the parson, and are even extended to cover whole acres of land;—land producing every herb, shrub, root, fruit, flower, and vegetable, which the luxury of modern times has introduced from every quarter of the globe.

Hay is to be tithed in swathes, windrows, or cocks, —not according to any rational principle, but wholly controuled by local customs. The courts have sanctioned the custom of measuring out the tenth part of the *grafs standing* for the tithe of *hay*, leaving it to be cut and made by the parson; adverse to their own maxim—that all predial produce is not titheable till after *severance* *.

Hay.

Under the influence of varying custom, it has in some cases been decreed that the church is entitled to the tithe of *grafs* made into hay. In others, the decision of Equity has been—that hay (or rather *cut grafs*) is to be taken as soon as severed, that is—as soon as it is in such a state as will admit it to be taken. From that moment it is the property of the church. And in the case of Fox and Ayde, Lord Chancellor King declared this to be the law of the land—*because* it had been so resolved in a Devonshire case (the case

Decisions as to
hay.

* Wats. c. 49.

Tithes.

of one Reynolds *.) Thus a partial custom, without assistance from the legislature, becomes general law,—under the convenient term *precedent* †.

Oppressive to the clergy and useless to the farmer.

This law is highly oppressive to the clergy, without affording any real benefit to the farmer. What, for instance, is the little additional labor to the farmer's people to turn and cock the tenth part with the rest? While they are passing by it, the work might be done. And how much more than their strict due by law, would this portion of labor bestow upon the clergy, who have tacitly relinquished almost all other personal tithes!

How injurious to the farmer.

By this determination, the farmer is compelled to foot-cock all his crop immediately from the scythe, a work more than requisite, which delays his business, puts him to unnecessary expence, and exposes him to the risks of bad weather. Again—to direct the parson to introduce his team, through a large meadow, while the grass is in this green state, is highly injurious, inasmuch that, although some obstinate and oppressive land-owners may insist upon their tenants giving way to these grievances, merely to harass the parson, yet every honest farmer would rather make the tithe into hay than submit to them.

The parson (say the courts) shall take his tithe in grass-cock!—But, where is he to carry it?—How is he to make it?—What is he to do with it, in this state? He must experience more toil and less profit, in collecting this tithe from the different quarters of his parish, and afterwards preparing it, than the gleaners, who wander from field to field, dependant on the churlish bounty of the farmer.

* 2 P. Will. 520.

† Lawyers appeal to usage, precedents, authorities, and statutes: by them and their pretended customs, “robbery is justified by antiquity, and fact is confounded with right.”

No human custom or institution can alter the *everlasting* laws of good and evil. Immortal justice cannot be subservient to the will and interest of mortal man.

The words of every endowment are "decimas *fæni*," not *graminis messi*;—positively tithe of *hay*, not of *cut grass*. It is also a *general* expression,—tithe of hay generally, throughout the parish, in every instance, from every crop;—tithe both of the "*increase and renewal*," according to Blackstone and, a yet better authority, common sense and justice.

The express words of endowments militate against this decision.

It has been said—the parson of common right may make the grass into hay upon the land on which it grew, although the *usage time out of mind* hath been to the contrary: and it is needless for the parson to alledge a custom for the doing of it*. If it be true that the clergy are thus indulgently accommodated, yet, who does not see the consequence of a mixture of persons working on the same ground for different masters, with different interests; especially as every land-holder fancies himself aggrieved, wronged, pillaged, by what the parson receives from him! But, is it *possible* for the clergy, in such busy season of the year, to procure temporary hands to get in their share of the harvest? However, supposing them obtained, where are they to find horses, waggons, &c.? They are restrained by law from occupying a sufficiency of land to maintain the requisites of regular farmers, and it is well known that many vicarages, and some large rectories, have little or no glebe. But, even admitting them able, on the spur of the moment to produce these essentials,—can they possibly visit the different quarters of an extensive parish at the same time, or in the same day? There are many parishes of fifteen and twenty miles in length: some of much greater extent. The parish of Simonbourn, in Northumberland, for instance, is *a hundred and twenty miles* in circumference! What then is the consequence of the ecclesiastical rights

Consequence of a mixture of servants working for different masters.

The clergy can neither find hands nor implements of husbandry to do themselves justice.

Parishes too extensive to admit the collection of tithes.

* Wats. c. 49. Thus is custom, at one time, paramount; at another, subordinate. Thus the same breath conveniently blows hot and cold.

being

being thus scattered as it were by the hard hand of law over every part of an extensive district? The farmers, exultingly sensible of the insuperable obstacles the clergy have to contend with in collecting their tithes in kind, insist upon retaining them at their own price, which is generally not one fifth of their value.

Shocking corn
on the butts a
release of their
hay-tithe.

The farmer's reaping, binding, and shocking his corn upon the butts, has been allowed by the courts as a release from the tithe of hay on the head-lands, under supposition that the tenth butt of standing corn was the parson's due, and that the owner's extra labor about the corn furnished a sufficient discharge*; admitting, in violation of their own axiom, one article, belonging to one claimant, who may be in knavish treaty with the farmer, to pay for another of a very different nature, and due to a different claimant; sacrificing the just rights of the laborious vicar to the collusive practices of a useless and untitled impropiator.

Hay-modus
extended to clo-
ver, rye-grass,

It has been permitted to extend a modus to clover, lucern, saintfoin, and rye-grass, although very lately brought into England, merely because the landholder chose to lay his modus as for *all tithes of hay*†. The introduction of such articles may justly deserve national indulgence, but cannot claim partial exoneration.—They are often, it is true, to be produced only at a considerable expence; but it is also certain that they could not participate in the purpose of the parties, when establishing a real composition for hay.

If such difficulties are opposed to the due receipt of these large articles, where the portion of tithe is perfectly manifest, what can be expected from such things, as admit of a nameless number of more secret frauds in tithing—such as milk, mills, orchards, potatoes, poultry, &c. which, in some parishes afford tithes of various consideration to the rector, and, in others, are the sole support of the vicar!

* Gibs. Cod. 581. 2 Leon. 70.

† Bunb. 20. and 79.

Milk, which in many parishes, should pay a tithe of some hundred pounds a year, is protected and withheld by a variety of roguish practices.

Milk.

This tithe was *originally* accounted for by the tenth part of every meal; *afterwards* by every tenth meal; and *now* by the tenth of every *day's* milk *. At one period, it was adjudged that the tithe of milk should be carried to the church-porch; at another, it was declared that of *common right* this tithe *in particular* is payable at the parsonage-house; at a third it was determined *in one voice*, by the court of Exchequer, that milk ought not to be carried, either to the church-porch, or to the parson's house, but must be fetched by the parson †. At *present* it appears to be law that, if the vicar does not attend in *every quarter of his parish* to take the tenth day's milk, the dairy-man sets by his tithe; but, unless it be sent for before the next milking time, he is to *pour it upon the ground*, because he has occasion for his own pails.

Contradictory
and unreason-
able decisions
respecting it.

The occupiers of milking farms, on purpose to harass the vicar, all give in their notices of this due on the same day, in a large parish, directing him to the evening's milking.—Now, let it be asked if it is *possible* for him to bestow this attendance?—Yet the courts require it. And, if he does not fetch it away before the next milking time,—that is before the next morning by four or five o'clock,—he loses it.

Such is *modern equity* fitting in judgment on the rights of the clergy!

To collect this article, the vicar must employ nothing less than *milk-carts*; and these could not possibly pass from farm to farm, through many parishes, but during three or four months in the year. And what would the milk be worth when he got it home? It must be during the summer-months alone, that he could any way collect it. It would therefore be so turned and soured, as to be fit only

Impossible to be
collected and
therefore the
clergy glad to
take *any thing*
for it.

* Rayner p. 938.

† Gib. Cod. 683. Ld. Raym. 129. Bunb. 73.

These absurd
contradictions
disfavoured by
law writers.

for the food of hogs; a purpose which would not pay for its carriage.

Thus absurd are the requisitions of Equity upon the manner of receiving tithes. And yet it is said to be a maxim that "*lex neminem cogit ad vana seu impossibilia.*" Thus Blackstone says—"Acts of parliament, that are impossible to be performed, are of no validity: and if there arise out of them collaterally any absurd consequence, manifestly contradictory to common reason, they are, with regard to those collateral consequences void."

But it is not to common law that the clergy dare look for redress. How then are they to release themselves from these demanded impossibilities?

Tithes being
presented to the
clergy according
to the original
intent the only
means of doing
away all difficul-
ties.

The due collection of the tithe of milk, as well as of many other tithes, in large parishes, being absolutely impracticable, it may be fairly contended from hence, and from customs to the contrary still extant in the distant counties, that tithes originally were not collected by the parson, but were in all instances presented to him by his parishioners. And this must have excluded all difficulties, preserving due justice to both parties. Hence too it follows that, if in these latter times, when a backwardness in the payment of tithes became manifest, it was found necessary for the legislature to enforce and compel such payments, it is but just that they should be made in such manner as was the original mode of paying them*.

This article, becoming titheable so often; being so peculiarly difficult of conveyance, and of so perishable a nature;—would it not be a wise and just law

* Formerly every man paid his tithe to what church or priest he pleased, and if he made no special appointment, they were paid into the hands of the Bishop, who in these times, lived with his clergy in common. Hence also it may be inferred that tithes were originally paid to the clergy, and not left to be collected by themselves. The original disjointed state of most parishes is a natural argument in favor of tithes being presented to the clergy.

that

that should enact a correspondent money-payment in lieu of the tithe in kind? This mode of paying tithe for particular articles—viz.—hemp, flax, madder, &c. has been adopted where the effect was an evident injury to the clergy:—do not the natural principles of equity then demand its extension to those particular tithes, which,—being from their very nature difficult, if not impossible to collect,—would accommodate and serve them in no inconsiderable degree? Would not such mode operate, effectually and justly operate, in the many instances where tithes cannot be taken in kind, and which open a door for numberless vexations and disagreements between ministers and their parishioners!

A money-payment should be established in lieu thereof.

The good effect of such a commutation.

Corn-mills are almost the last relick of personal tithes, which, in early times must have been highly productive. By the 2 and 3 of Ed. VI. provision was made for the more certain payment of personal tithes, particularly in market and trading towns. It was observed that such places, in the times of popery, those days of darkness and imposture, might spare the tithes and glebe, because the very number of people supplied a competent provision for an unmarried priest, from small tithes, personal tithes, legacies, mortuaries, obits, masses, sham miracles, extra merits, and other engines of priestcraft; but that this was no longer the case. Little now was granted to the vicar's legal demand, and less from the benevolence of the people.

Mills and personal tithes.

Personal tithes a considerable revenue to the priest.

The remedy, intended by this statute, proved utterly ineffectual; and poor vicars of market-towns continue to have the most laborious cures and worst maintenance.

It was hereby enacted that “such tithes should be paid as they had *accustomably* been for *forty years past*, or of *right ought to have been*.” Sir Simon Degge, and it seems all the lawyers from his time, have contended that this act restrains the payment of personal tithes to such persons only as had *accustomably*, or *constantly*, paid such tithes

Tithes.

within forty years before its passing. They take no notice of the last clause—of the persons who of right ought to have paid.

Tithe of mills
very inconsider-
able, &c.

Corn-mills have been sometimes deemed a predial tithe, and to pay the tenth toll-dish, and to the incumbent where the mill stands. At other times, and of late, they have been adjudged a personal tithe*—to pay only the tenth of the clear profits, and to the parson of the parish where the miller publicly participates in the consolations of religion.

But, whatever may be the name of this tithe, its amount is nothing to the clergy. The extent of the mill's work can only be obtained from the miller himself; a circumstance which gives place to endless fraud and dispute.

Opinion of Mr.
Maddocks.

Although corn-mills generally claim some modus in lieu of the tenth of their profits, it must be matter of surprize, that can only be done away, by the following opinion†—“The tithe of mills is within the statute of Ed. VI. and to be paid as it hath been for 40 years before, (at 40 years before the passing of this statute) and therefore if it can

* Dodson and Oliver, E. 1721. exch. the barons were divided upon the question whether corn-mills should pay a predial or a personal tithe. In consequence the plaintiff obtained no decision. Bunb. 73.

† The subsequent authorities put a direct negative upon the possibility of a legal modus for the payment of the tithes of mills.

Hand mills, termed querns, were very early used for grinding corn, and when corn came to be used in greater quantity, horse mills succeeded,

Windmills were known in Greece and Arabia as early as the 7th century, and yet no mention is made of them in Italy, till the 14th century. That they were not known in England in the reign of Hen. VIII. appears from an household book of an earl of Northumberland, cotemporary with that king, stating an allowance for 3 mill horses, two to draw in the mill, and one to carry stuff to the mill and fro. Water mills for corn must in England have been of later date.

Lord Kaimes b. 1. sk. 1. neither wind nor water mills of any kind were known in England at the beginning of the 16th century, nor so far as I know, in any other part of Europe, north of the Alps. Smith's Wealth of Nations, V. I. p. 390.

“ be

“ be proved that mills have paid a modus for 40
“ years, they are entitled to the benefit of this sta-
“ tute. (J. Maddocks, Lincoln’s-Inn, 7th Au-
“ gust, 1763.)

If this be found doctrine, the statute, contrary to its avowed principle, has been an injury to the church: but, in this case, what becomes of the restrictive statute of Elizabeth? In defiance of that prohibition, (according to Mr. Maddocks’s opinion) the clergy may still establish moduses, with respect to mills, a circumstance equally cruel and impolitic; —cruel to the most oppressed of the parochial clergy, and impolitic, because tending to favor a feudal system, which in these times can have little hope of endurance*.

By this opinion the clergy may still establish moduses with respect to mills.

The clergy of our populous market-towns have now very little to expect, but from oblations and personal tithes. Corn-mills are always found in these neighbourhoods. It is right therefore, it is absolutely necessary in such cases, to support the tithe-payments of them†. The necessary qualifications of the clergy in large trading towns, in learning and

Necessary qualifications of the clergy enlarged.

* Manerial mills, it must be presumed were originally erected for the convenience and benefit of the lord’s tenants. They soon became an engine of oppression: and now, while the stranger’s corn is ground at $\frac{2}{3}$ or 1d. per bushel, the tenant is bound to the mill at the rate of 4d. per bushel, which is the moderate pay of three shillings an hour for one pair of stones.

† It has been determined in equity that a customary payment of 5s. 4d. in lieu of the tithes of certain lands, should discharge the tithes of a new-erected corn-mill; though it was not even pretended that any mill of any kind had ever stood upon any part of those lands, and therefore could not have employed the understanding of the parties, at the time of their agreement to such money-payment. 2 Inst. 490. Gibs. 675. 1 Roll. Abr. 651.

This decision seems to have hinged upon the idea of corn-mills paying a *predial* tithe, a tithe of the same nature as that from the land.

Other great lawyers have since contended that the profits of lands and of mills are of different natures, and that the latter must not be charged in respect to their real value, but merely in respect to the labor of man. Cro. Ja. 429. 3 Bulst. 212.

And this seems to be law to-day,—what it may be tomorrow, tomorrow alone can tell us,

learned

Tithes.

Their emolu-
ments should be
increased.

learned accomplishments, are greatly multiplied by the enlargement of the public mind and a general proficiency in knowledge that in these days pervade all orders of the people: hence their industry and exertion is doubly requisite, in order to rescue the truths of religion from the impious sophistry and artful misrepresentations, with which they are treated by the numerous sectaries in such places. Their emoluments should be greater than those of other ministers, not only as their labours are greater, but as a due compliance with the habits and modes of living among their parishioners requires greater. They must necessarily maintain a decorous appearance, to procure them respect from the bulk of the people, who unhappily are governed chiefly by appearances: whatever looks like meanness, whatever exposes them to poverty, not only lowers personal regard but materially injures their ministerial character; which, in no inconsiderable degree, disqualifies them from acting with due effect. In our present state of manners, it is in vain to imagine that the people will treat poverty with respect, however learned, pious, and zealous its possessor. While the ministerial maintenance in market-towns is insufficient for the decent purposes of life, their churches will be supplied only by the necessitous or undeserving; to the prejudice of the sacred order, and the inlet of schism and infidelity.

Why not the
trader pay tithe
as well as the
farmer.

It may perhaps be asked if the farmer's is not, *in part*, a personal tithe, and why the produce of his toils should be so heavily taxed, more than the lucrative employments of the trader?—Why, for instance, this demand should be made upon corn-mills, and not upon fulling-mills, smelting-mills, cotton-mills, &c? Is it not (says the farmer, and with some colour of reason) full as incumbent upon the merchant and the manufacturer to evince their gratitude to the bountiful giver of their vast acquisitions, as it is upon the husbandman for the puny profits of his harder labor? Who controuls the storm? Who stilleth

fillleth the raging of the sea?—The same almighty director, who giveth plenty to the vintage and fatness to the land!!

Orchards, in the cyder-counties, would afford a tithe of considerable value, were it duly acknowledged. But, in bar to the receipt of this article, a modus of *twopence* a hogshead for *cyder* has been admitted; and, at another time, *eight pence* a hogshead has been declared a modus *equally* valid;—without telling the parson what tithe he was entitled to, when the apples should not be used in the making of cyder.

Orchards.

To answer the fraudulent purposes of parishioners, orchards are often deemed gardens, and gardens stated to be orchards: both pleas, as a protection from tithes, equally unfounded. It may be said, without fear of controversy, that there is no such thing as an *ancient* orchard. Apple, pear, plumb, and cherry-trees were introduced to England in the reign of Hen. VIII.—Here then is a pretty good sample of *legal* moduses against the claims of the clergy!

This tithe, wherever it is paid, gives place to the practice of various frauds against the church. It would therefore be well that this, with agistment, milk, &c, should be accounted for by a money-payment—a payment to fluctuate with the varying value of orchards per acre.

Potatoes, which, particularly in the counties upon the coasts, are now very extensively cultivated, and their crops full as valuable as wheat-crops, pay scarcely any thing for their tithe. As, at every getting, the vicar is to have notice to attend and receive his tenth,—if he attends, the farmer, with a sneer, digs up *ten* or *twenty*, bidding him—“take his tithe, and “come again tomorrow.” Does justice tolerate such contemptuous insult on any other public officers? If he attends not, the farmer siezes that opportunity for getting up as many as he can, setting out

Potatoes.

Vexations given by the farmer in setting them out.

out for the parson what portion he pleases*, and probably even into those he turns his pigs in the night†. Subject to these favored frauds, the clergy, in lieu of this article, are obliged to receive any little money-payments he can obtain.

Rakings.

Rakings are properly the scattering of corn, of which tithes have been paid. The tenth cock being set out, the rakings are not tithable, unless by *custom*. This supplies a convenient evasion to the farmer, by mowing in a loose, dispersed manner, to save one third of his crop from tithing. But, where such fraud appears, a court will give redress! True; but what would be the recompence? The subtracted tithes would in no case pay the costs.—The difficulty of obtaining sufficient proofs is, almost in all cases, impossible.—Nothing is certain, but delay, vexation, odium, and expence.—This is mockery! Insult added to injustice!

The plea for the exemption of rakings false.

The original plea, by which rakings were exempted from the claims of the church was, that they were a mere relick, “left for the poor, *according to the law of Moses* ‡:”—a plea even then wholly

* The plausible men at the bar pretend to dictate a rule of three or four days notice, in these cases: but the truth is—there exists no law. A jury of *farmers* must decide upon the propriety of the notice.

† Mr. Maddocks is, or at least *was*, in the year 1783, of opinion that potatoes, which are grown for the farmer’s own use, are not subject to the tithe-claim. And will Mr. Maddocks rise in a revenue-cause, to contend for similar indulgence in behalf of the tallow-chandler, the soap-boiler, the starch-maker, &c. &c.—or, why is the tithe-tax alone to be thus curtailed??

It will be observed that law-decisions are here quoted, not in support of the rights of the church, but to point out their own wrongs;—to shew how bewildered men always are, when they once lose sight of *principle*. Feeble indeed would be the foundation of ecclesiastical claims, had they no better support than these. These may be said to give them what they now obtain; but it is to reason, immortal reason, that the clergy must look for a certain and honorable establishment.

‡ Litt. p. 35. 1 Cro. p. 475. 1. Roll. Abr. p. 645.

When the purpose is to *plunder* the clergy, the conscientious gentlemen of the law can acknowledge the *law of Moses*; but the same

wholly unfounded. The scattered straws alone were all that the poor were permitted to gather. Whenever these were *raked*, they were thereby collected for the benefit of the farmer.

To demand a blush from the *cavillers by trade*, would be exacting too great a departure from the due decorum of character; but common sense might be expected to remain, after shame is extinguished.

The courts have of *late denied* the poor's right to *glean**. But if the farmer avowedly reclaims from the poor these remnants of his crop,—for which crop, but not for them, tithe has been paid,—the clergy have an unquestionable right to tithe from them. Tithe has been paid for a *part*, but the church is entitled, of common right, to a tithe of the whole crop. It would be absurd indeed to contend that

The parson entitled to tithe of the whole crop.

the payment of some certain sheaves of corn is a good prescription for the tithe of the whole field: and yet this must be the case, if the farmer is allowed to take the rakings to himself. It very commonly happens, in a short bad crop, that a *fourth part* is inevitably left in rakings. And, where it is otherwise, who is appointed to judge whether they are minus voluntarie dispersæ?—a jury of *farmers*!—a jury of men who have that bias on their minds, which will in all cases ensnare their consciences!!

In a bad crop, a 4th part left in rakings.

Wood, it was contended in the case of Hicks and Woodson, is not titheable of common right, because

Wood.

same men cannot admit the same law as a foundation for the *claims* of the clergy.

Blackstone says the divine right of tithes began and ended with the theocracy. But, if the right must not be attributed to Moses, at least, make not Moses the author of the wrong. If the appointment to the Jewish priesthood sanctions not the payment to the ministers of Christ, at least, father not upon the faithful Jew the pillage of the Christian church.

* Mr. Justice Gould, in an able argument, very honorably and feelingly dissented from this opinion.

Tithes.

Case of Boulton
and Hurfler.

it does not renew annually* : and this is the reason why a hundred may prescribe in non decimando for tithe-wood ; for as by custom it grows due, by custom it may be made not due. Afterwards, in the case of Boulton and Hurfler, the court acknowledged indeed this reason to have been *then* laid down, but said that it never had been allowed for law by any of the *other* judges of Westminster-Hall†.

Case of Walton
and Tryon.

In the case of Walton and lady Mary Tryon, the plaintiff brought his bill for the lops and tops of old pollard trees. Plaintiff's counsel asserted the tithe of wood to be payable of common right : that before the statute of *sylva cædna*, all trees were titheable ; but by that law all *timber*-trees are exempt ; and " the reason is plain (says he;) for timber-trees " yield profit but once in a century ; and therefore " as it was so long before the owner had a profit, " that wood was exempt." As it was so long before the owner had a profit, it was deemed *just* that the church should *never* have a profit from it. The bill was dismissed‡.

Wood intended
by stat. 45
Ed. III.

The kind of wood intended to be freed from tithe by the 45th Ed. III. was such alone as was necessary for the construction of houses and ships of war, comprehending only oak and elm ; but the law has proceeded to declare, hazel, holly, willow, and even white thorn to be exempt, upon suggestion that they were of twenty years growth, and that by the custom of the place§ they were used for *timber*—to build

* L. Raym. 137. 2 Salk. 655.

The same reason applies to saffron, which is gathered but once in three years ; but yet saffron pays tithe.

† 1 Barnard. 71.

‡ Burn. Ec. L. Vol. III. p. 452.

§ See the folly of making custom into law. Our antiquarians and first historians tell us, that in the time of Alfred the local customs of the several provinces were grown so various, that he found it expedient to compile his dome-book, or *liber judicialis*, for the general use of the whole kingdom. And indeed this

build and repair their *ploughs*. Dotards, or old decayed trees, cut down merely for fire-wood, have been also adjudged tithe-free, because they were once privileged, as *sylva cædna*. We may observe that the foundation for their privilege—"their utility, "as timber"—exists no longer. True; but this must not be a consideration; it is the *right* only of the *clergy* that is invaded, therefore the privilege may remain even without foundation; and not only remain to cover the decayed body of the tree, but extend even to *bark*, *root*, and *loppings*. Nor does it signify how often a tree is lopped: it is not necessary that the branches should be of twenty years growth, but the body of the tree shall at all times free the branches*. Many more legal juggles to obviate the payment of tithe for this, and for various other articles, might be exhibited; but enough has been said to evince the existence of a spirit of hostility as repugnant to reason, as it is to right; as absurd, as it is unjust.

Other wood exempted.

The injury is the invasion of right.

Among the extra objections, which are opposed to the honest payment of these and other small tithes, the distinction demanded, not only by Mr. Maddocks in favor of potatoes, but occasionally by other *ingenious* gentlemen, and at times by the courts, in behalf of pigeons, rabbits, fuel of all kinds, peas, beans, and even cattle, consumed in the farm-house, requires notice, inasmuch as they always injure the most necessitous, and commonly the most meritorious of the clergy.

Pigeons, rabbits, peas, beans, &c. consumed in the farm-house.

Men of justice—suffer it to be asked—why was this *principle* of privilege never applied to the corn-crops, without which the farmer's family cannot subsist? Does the right of the church in any case arise from the *use* of the article? Is it possible for the parson to know the owner's intention? or *can* he

this has been constantly found expedient, and therefore put in practice by other nations—as in Portugal, Spain, and Sweden. Black. Com. Intr. p. 64 and 66.

* 2 Inst. p. 643. 1 Roll. Abr. p. 640.

Tithes.

ultimately ascertain the numbers that are spent in the farm-house? The farmer's commonly contend that *all* are consumed in their families, which gives birth to disputes that, as in other instances, are referred to the decision of a jury of men, whose prejudices have long since prejudged the cause. If the principle of this exemption be found, why is it not extended to all other articles of a domestic demand? Principles admit no partial adoption. Would you be consistent, you must adhere to your maxims throughout all their consequences.

As to the few tithes remaining to the church, whether great or small, or whatever subtleties of distinction the courts may annex to them, it cannot escape observation that the decisions of the last thirty years, respecting them, have been generally injurious to the clergy. Scarce any species of tithe has in its turn escaped entailment of its rightful produce. The law has, by distorted constructions, been rendered almost uniformly adverse to tithe-claims. In cases, where such decisions would have discovered manifest perversion too glaringly, the business has been virtually, or, in other words, insidiously accomplished. The rights of the clergy have been eventually wrested, till, at length, of all their former ample possessions, few indeed are left, and those, from various pleas of prescription, *equitably* supported, very pitifully productive. So impoverished are the vicarages, as to defeat in a great measure, the benefit of the establishment itself; for, what is the kernel worth, if you must ruin your teeth in cracking the nut? Admit the rose ever so fragrant, little is its eligibility, when presented only through a thicket of briars and thorns. The undisputed dues of many *livings* will scarcely supply a minister with the meanest necessities of human existence*. The natural consequence of which has, in

Many livings not
worth accep-
tance,

* An instance is pointed out by Rayner, in his preface, and many others might be exhibited, where the meekness and forbearance

in many instances, resulted. The benefices, no longer *benefits*, are vacant; the parsonage-houses are tumbled down; the consecrated buildings, those melancholy remains of ancient sanctity, are reduced to ruins; and the people abandoned to atheism. Instances are not wanting, even in the neighborhood of the universities and the metropolis, of some few respectable inhabitants paying by subscription for a monthly discharge of the public duties of the ministry; which, as it is unsafe to enter the churches, is performed in the church-yards in summer, and in some adjacent houses during the more inclement seasons. Hence arises the great increase of Methodists and other separatists from the established religion, ever on the watch to alienate the minds of the people from the national clergy.

Consequences,

forbearance of the minister had gradually encouraged the refusal of tithes, till at length he was obliged to subsist on the *charity* of his parishioners.

CHAP. V.

Justice—Strictures on the means adopted for the establishment of customs and prescriptions against the rights of the church—The usual and legal proceedings as to expence, delay, and consequent oppression—Hardships peculiar to the clergy in supporting their rights—Reflections on the propriety of some more summary mode of proceeding—Observations on non-residence—and the various cruelties practised upon the clergy, both in England and Ireland, &c. &c.

The end and object of all government.

THE first principle of social union, the end of all government, is the public good, which exists only in an exactness, a simplicity, and a promptitude of executive justice, in a uniform and *expenceless* administration of equal laws. Thus we are told that the principal birthright and *blessing* of a Briton is that of applying to the courts of justice for redress of injuries;—that the law is the supreme arbiter of every man's life, liberty, and property;—and that courts of justice must at *all times* be open to the subject, and the law be duly administered therein. The emphatical words of

The law the arbiter of life liberty and property.

Emphatic words of magna charta.

magna charta, spoken in the person of the king, “who in judgment of law, (says Sir Ed. Coke) is ever present and repeating them in all his courts, are these —*nulli vendemus, nulli negabimus, aut differemus rectum vel justitiam*:—and therefore every subject, without exception, for injury done to him in *bonis, in terris vel persona* by another subject, *without any exception*, may take his remedy by course of law, and have justice and right for the injury done to him, *freely without sale, fully without denial, and speedily without delay.*”

Statutes illustrative of this position.

It were endless to enumerate all the acts of parliament, wherein justice is directed to be done according to *this fundamental* of the laws of the land By the 2. Ed. III. c. 8—and the 11. Rd. II. c. 10.

it is enacted that no commands under the king's seal be issued in disturbance of law, or to *delay common right*; and that, though such commands should come, the judges shall not *cease* to do right; which is also made a part of their *oath* by the 18 Ed. III. So that, in appearance, these men are responsible, not only for the action, but even for the inaction of their office.

Here stands the fair *theory* of *British jurisprudence*!!

How far this popular speculation is supported by fact and practice, a very short enquiry will painfully demonstrate*. It will be found, by looking no further than the legal process necessarily resorted to, in those baneful contentions to which tithes give birth, that the execution of our laws is lamentably fettered by forms, by *costs*, and by *delays*, which injustice, in all such cases, is permitted most grossly to abuse—thereby retarding the decisions of right, and even creating a necessary *purchase* of it, highly vexatious and wrongful.

Contradicted by fact and experience.

No man, whose eyes are not blinded by fees or by prejudice, can look upon the enormous mass of writings, that particularly accumulate in equity-causes, without indignant reflections on the expence thereby occasioned, less than one hundredth part of which would be sufficient for the purpose of obtaining justice between the parties. The very names and descriptions of the various parts of the process, with

Equity-suits highly vexatious, dilatory, and expensive.

* The whole system of what is called *common-law* process is incontrovertibly distressing, dilatory, and oppressive in point of expence.

“ The man, who can have the audacity to assert that the system is right, by which a creditor risks 40, 50, 60, or 70l. to recover forty shillings, must either be an abandoned miscreant, who conceives laws were made to protect swindlers, and not to enable the honest creditor to recover his own; or he must be fit for St. Luke's, and consequently can have no capacity to qualify his judgment on the subject.” See Pechiler's Pract. p. 110.—A sensible and highly honorable treatise, shewing the necessity of a reform in the practice, by a statement of facts and arguments, never attempted to be refuted or denied.

the

Tithes.

the expences annexed to each part, would scarcely gain credit, except with professional men. Hundreds are sometimes expended, where not a witness is examined.

To proceed *fully* through all the forms to the end of an equity-suit would be to write a commentary on endless volumes of practice, and consequently to exhaust the reader's patience.—It would likewise only be to enlarge upon an evil universally known, and too generally felt, as a most calamitous grievance, oppressive to the subject and disgraceful to the country! But, as the parochial clergy, a very needy order of men, are peculiarly exposed to this ruinous process, it is incumbent upon *their advocate* to point out at least those leading particulars, which himself has experienced to be singularly oppressive.

Tithe-disputes
formerly decided
more summarily.

In the Saxon times, tithes were recoverable in the county-court, where the bishop or his deputy, and the sheriff, sat as co-ordinate judges, there being at that time no separate court of ordinary ecclesiastical jurisdiction*. At present, notwithstanding various statutes to continue their recovery, either in the county or ecclesiastical court, the clergy feel themselves compelled by many artful obstacles to sue for them in the courts of equity, and chiefly in the Exchequer-chamber—as the most *easy* and *ready* way of obtaining what even law declares to be their due.

Equity-process
examined in its
real practice.

This mode must in some degree be examined,—examined, not *technically*, but *truly*; not by what the lawyer may *profess*, but by what the parson *suffers*; not by the written rule of the books, but by the real wrongs of the church.

During the first year or two of his incumbency, the well-intentioned vicar is generally amused with expectations of a quiet recovery of his imagined rights by means of reference and arbitration. The parishioners, from his first mention of dormant

* 2 Inst. 661.

tithe-claims, are determined upon their future measures, are unanimously and immovably resolved to resist *all demands*, other than those paid to the last incumbent, whose poverty, perhaps, would not suffer him to exert himself, or whose indolence has for-gone every valuable due. Fully sensible of the disadvantages which must attach upon him—that he contends only for a life estate, while they fight for perpetuities—that he is a stranger in the county, without interest, without connection, without any thing to oppose to their influence, who are related, connected, and allied with every quarter of the province—that his expences through the drowsy proceedings of equity must be greater than the object is really *worth* *—they expect, by united and spirited opposition to deter him from litigation. The pretended season of amicable compromise, is the actual season of preparation for contest.

The northern baronet, repeatedly mentioned, openly invites all land-owners to a combination against what he calls the novel claims of the church; and this, under the false pretence that the clergy are already in combination against the laity. It is to be feared that there never will exist a sufficient degree of animated unanimity and decision in the church, to effect the adoption of this, which at present is the only measure that promises redress to the many oppressions under which it labours!

Combinations
against the
clergy.

Let it not be objected that the clergy have a remedy in their own hands—that all combinations are indictable, without considering the difficulty of obtaining sufficient proofs for this purpose †.

Clergy should
combine to re-
cover their
rights.

These

* With decrees *constantly in his favor*, the present Archdeacon of Chester is three thousand pounds out of pocket by *recovering* tithes that produce forty-five pounds a year.

† In the case of Travis and Whitehead, the determined purpose of a powerful combination to destroy an unsupported son of the church *was proved in the cause*, but not regarded by the court.

Tithes.

These coalitions are surely *not* indictable; or else, distinguished counsel strangely mislead us*.

Oppression resulting from combinations.

Do not these opinions, it may be asked, legalize a combination of the wealth and interest of a whole parish, planting them as a battery against the rights of an individual, and that individual not unfrequently the poorest man in its limits? Montesquieu says—"the best method to judge of the spirit of any law, is to recur to the occasion on which it was made." Now, what was the original purpose of the statute on this point?—The protection of the weak against the powerful, the indigent against the wealthy:—to prevent that very union of influence, interest, and riches on one side of any public appeal to justice, which is avowedly recommended by these opinions. It was to put every man as nearly upon a level as possible, in his application to the laws of his country—to leave every one at liberty to fight his own battles: not to draw up a whole battalion in heroic array

One would think there is no such misdemeanor as maintenance or barratry, as, in the case of Bosworth and Limbrick, Lord Ducie's steward acknowledged that his master ordered him to support and protect the tenants against the claims of the church, and that, accordingly, he *did* pay their expences. Rayn. p. 762. 799. 809.

* The following written opinions of Lord Kenyon and Mr. Maddocks, dated Lincoln's Inn, Aug. 7, 1783, seem to contradict the position that combinations (at least against the *clergy*) are at all illegal.

In reply to these questions, from the county of *Chester*.—"Is it advisable for the land owners and parishioners to unite in opposing all, or any of the said new claims made by the rector? And what steps are most prudent to be taken by them, or on their behalf, to support the ancient customs and payments, in maintenance of their *supposed* rights and interests?"

Lord Kenyon—*then chief justice of Chester*.—"It is certainly advisable for the land-owners and occupiers to resist the innovation attempted; and I advise them to file a bill in equity to establish the moduses. Of late times bills by *some* owners and occupiers, on behalf of themselves and the *rest*, without making all the owners and occupiers parties, have been allowed."

Mr. Maddocks—"An agreement by the parish to join in support of the customary moduses, used in the parish, carries nothing unlawful in it."

against

against a single champion. It must be obvious to the least reflection, that such an association is plainly a compact, to prevent the due course of equity, and to intimidate the injured from suing for that redress, to which the laws both of heaven and earth declare them to be entitled.

Disaffected from interest, often from religious or political principles, an infidel esquire and five or six purse-proud graziers brood over the parson's ruin;—at length they hatch a parish-modus; then, like the solemn league and covenant of old, swear an everlasting opposition to all the claims of reason and justice, and, even in the eighteenth century, can find professional men to twist the law, as Peters * did the gospel, to give colour and authority to the proceeding.

Thus circumstanced,—the combination complete, the modus agreed upon,—the insulted vicar is at length compelled to stand forth an humble appellant to the laws of his country. Reflecting that rights without remedies are unknown in the code of reason—that the first principle of the compact of authority is that governors yield protection, where they exact obedience †—he hopes to vindicate his invaded property.

Justice.

He files his bill, which details the injuries received, and points out the nature of the decree, which he *humbly prays* may be made in his favour against his oppressors. He obtains subpoenas which are notices to the defendants that such suit is pending, and orders for them to appear and show cause why such decree should not be made according to the petition of the claimant. This *appearance* is made by directing a clerk in court, or other solicitor, to write their names

Vicar compelled to sue.

* Cromwell's chaplain.

† The remedial part of the law is absolutely necessary. In vain would rights be declared, in vain directed to be observed, if there were no method of recovering and asserting those rights, when wrongfully withheld. This is properly the protection of the law. Black. Introd. p. 55.

at a particular office of the court. If they refuse to comply, much time may be exhausted, and many hundred pounds spent, in compelling them. A *capias*, a process for *outlawry*, a commission of *rebellion*, and an order and commission of *sequestration*; are pursued in their proper routine.

If the complainant has property to support this process, he keeps his ground; if not, the cause is *lost* for want of fees.

Delays.

The names are at last written. Defendants are now entitled to a long delay, during which they are *nominally* required to plead, demur, or answer to the bill. Upon the expiration of this time, they have a *right* to further delay; but yet the *encouraging forms* of the court require their solicitor to make a brief for counsel, to move the court for this delay. The solicitor must also attend, and pay for the consequent order, entry, copy, and fee that it be served. Defendants are again *entitled* to further delay, but must again employ solicitor and counsel, for drawing and presenting petition,—and again pay for order, entry, copy, and service. Once more they can *demand* additional delay: once more the court demands *humble*, but *expensive*, petition,—order, entry, copy, and service*. Confining ourselves to the practitioner's own statement, defendants may *insist* upon (nonsense as it may seem) nine weeks *indulgence*; but, should not *Equity* admit this, without insisting upon *three payments* for it!!

If, during all this time, the defendants had stopt paying, or the solicitor had stopt writing, the same

* The men, concerned in this practice, pretend to be, at least, *uniform*, in the business; and assert that the regular time, allowed for these applications and orders, is—first, a law-term, afterwards four weeks, three weeks, and two weeks;—that is *nine weeks*. But the fact is, they have *no rule*. “We do speak that we do know, and do testify that we have seen.”—To a bill filed the 13th of May, time was granted for answer, in the first instance, to the 23d of October,—and, by private application to the following term: again, by application *unknown* to, and *therefore unopposed* by, the complainant, to the 23d of November—more than *twenty-seven weeks*.

process, which was used to compel their appearance, must have been repeated; to wit, *capias*, *outlawry*, commission of *rebellion*, and *sequestration*.

The time at last arrives, when defendants are *really expected* to give in *some sort* of answer to the bill. Here, must advance new motions, petitions, decrees, orders, &c. for amending the bill, for referring to Masters the insufficiency of answers, reports upon those answers, and exceptions to Master's reports, with orders and decisions relative thereto.

Answer.

An evasive answer commonly obliges the complainant, either to take exceptions to it, or to amend his bill. If he excepts, he does so indeed at the cost of the defendants, that is a cost of forty shillings—an easy purchase on their part of a renewed length of time to harass and torment him.—And they may thus insult him three times. If he amends, which he is generally forced to, by the art and illusion of the answer, his unprincipled opponents both obtain costs and acquire a degree of time as unlimited as before. The work commences *de novo*.—They have discovered, by the close expression of his amendment, upon what he peculiarly designs to hinge his plea; and therefore, to avoid the danger of being pinned down to any specific reply, seeing the advantage of dealing in generals, they take new ground—return a second answer elusive of the first; thereby leaving a door still open to future evasions.

Tricks and evasions.

Blackstone asserts that in the several stages of special pleading it must be carefully observed, not to depart or vary from the title or defence, which the party has once insisted on; for this, which is called a *departure in pleading*, might occasion endless altercation*. Again he remarks † that, in civil actions, when

Departures in pleading not regarded.

* Bl. Com. b. 3. ch. 20.

† Bl. Com. b. 4. In the case of *Berny and Chambers*, leave was given to amend an answer to a tithe bill, wherein the defendant had sworn, that such a close contained *nine* acres, and to make it *seventeen*, though issue was joined and a commission had issued. In the case of *Wortley Montague* against ——— the court

Tithes.

when a man has his election what plea in bar to make, he is *concluded* by that plea; and alledges, with much, not of *technical*, but of *real* truth, that "this strictness must be observed, quia interest reipublicæ ut sit finis litium." Our equity-lawyers do not appear severely tenacious of this interest, but suffer the untenable answer of last year to be superseded by a better of this;—the sacred appeal of yesterday to give place to the oath of to-day.

Sufficient answer.

Suppose a sufficient answer at length obtained. The complainant replies; and the cause being at issue, the court directs a commission to examine witnesses on behalf of the parties*.

Ruinous expence of commissions.

This mode of taking evidence on the spot was certainly at first intended to mitigate the expence of the proceedings: but this, like the establishment of tithes as a maintenance for the clergy, though in its commencement a wise and good expedient, is now, in its just design, evaded and lost; commissioners being too apt to consider such meetings chiefly as occasions of feasting, in which they consume nine tenths of the day. In the case of Bosworth and Limbric, the commission, with a renewed commission obtained by the defendants, lasted *nine weeks*. In the present Simonbourn contest, one commission cost the rector eleven hundred pounds,—an expence that would have well afforded a separate coach and six to London for every witness that he examined.

court refused to let the defendant amend his answer, by only altering the day of payment of a modus, although issue was not signed, and the day set right in a cross-bill. Rayn. p. 244-5.

* Here the vicar is bullied and buffeted beyond all bearance: insulted on every side, both in his own person, and in those of his witnesses. Every thing, perhaps, is opposed; not only the validity, but even the very existence, as well of ancient endowments, as of *grants*, prescriptions, or right of any kind in the vicar; not only to the tithes in dispute, but also to all tithes, annexed to the vicarage, however long enjoyed.

In the case of Davie and Lord Brownlow, the *right honorable* defendant was hardy enough to controvert all vicarial title by grant, &c. although he thereon founded his own right to dispute that of the vicar. Rayn. p. 847.

In the business of an election, to save the expence of protraction, a stated number of days only is allowed for the duration of the poll—in the city of London a week ; and is not some limitation equally necessary for taking evidence by commission ? “ A
“ commission out of chancery, or the civil law-
“ courts, for examining witnesses in one cause, will
“ frequently last as long, and of course be full as
“ expensive, as the trial of an hundred issues at nisi
“ prius ; and yet the fact cannot be determined by
“ such commissioners at all ; no, not till the deposi-
“ tions are published and read at the hearing of the
“ cause in court *.”

Instead of this ruinous delay by depositions before commissioners, might not evidence be taken, as already suggested, in open court, at the county-sizes, or quarter-sessions ; when each party would have opportunity of employing counsel for this purpose ? Was the resident clergyman in every parish a magistrate, as previously recommended, there would be a sufficient number always at hand to hold a quarter, or (what would perhaps be much better) a monthly-session, in every market-town.—Should this even give the clergy opportunities of supporting and enforcing their tithe-claims, it would also operate as a useful spur to the country gentlemen to assume the magistracy, which would more than balance the evil—if indeed affording a fair opportunity of enforcing right can with any propriety be called so.

Taking evidence by commission, upon the spot where every witness is surrounded by his relatives, who are all notoriously interested against the clergy, and that too, without cross examination, which is very properly considered by the bar as absolutely necessary to the investigation of truth, is setting up an insuperable bar to the rights of the church and mocking the clergy with the play of a shadow. Real, bona fide, substantial justice is evaded. A

Evidence better
obtained than by
commissions.

* Blac. Com. b. iii. ch. 23.

Tithes.

specious form only presents itself, which when brought to the test of *palpability*, eludes the grasp and dissolves in empty air. Neither ought it to be forgotten that the evidence against tithe-claims results from ready, willing, eager witnesses, while those of the complainant are dragged, like impressed men, into the service, and discharge their reluctant duty only as far as it can be extracted by the arts of ingenuity, or extorted by the force of threats.

Necessity of
confronting evi-
dence, &c.

The necessity of confronting witnesses, in these cases, with each other—as well as of occasionally examining them apart, is strikingly obvious. Men will say that readily in a private room, which they dare not utter in a public court. Confronting and contrasting evidence is the only crucible that affords unalloyed truth. Written evidence, in the hand of an artful commissioner, may be made to say any thing and every thing, and that even contrary to the design of the deponent. But, alas! however necessary regulation may be in this respect, the ear of Equity is deaf to the claim!

Hearing.

The evidence, such as it is, is now to be published. The parties prepare themselves for closer combat;—and a day of hearing is appointed. Hope bounds in the poor plaintiff's breast, and exalts him into something more than vicar. Long has he steered his course by the rudder of patient perseverance—his voyage has been long and dangerous;—at length, he thinks to have reached the happy haven of his fondest hopes.—What is the event?—Lo!—not a *decision*,—but a *promise* to decide—“*at a proper time*”—some future period, a *year*, or *two*, or *twenty-two* years hence*. The claimant, possibly, for want of his

* If there be any principle to justify a delay of two, the same will defend a delay of twenty-two years.

In the case of Markham against Birtwhistle, &c. the last day's hearing took place—8th of May, 1789—at which time no doubt was pretended, no difficulty suggested; on the contrary, the court acknowledged that defendant's *had not made out their case*; that there did not appear a *possibility* of making out their modus,

his legal subsistence, all this time in a jail. Deliberat Roma, perit Saguntum.

These dire delays at length departed, the day of Consequences of decree. decree arrives at last. His season of sorrow is now surely passed! The edict of the court "he thinks, "good easy man, full surely," will restore all his rights, will instantly realize all his honest expectations. Vain hope! He is not yet half through his herculean undertaking. A decree, fully favorable, sends him once more to commission, (a commission of accounts,)—once more exposes him to the perjuries of his parishioners.

From this moment even the fallacies of equity forsake him. He is to look for no future costs. If he will proceed to obtain any thing more than judgment—more than the vox et præterea nihil—he must do it at his own certain expence. The reward of all his sufferings is a decree—a new order to the defendants to exhibit an estimate of their last ten or twelve years tithes, though they have already, in their answers, declared themselves *unable* to furnish such estimate. There is indeed granted, at the same time, a permission on his own part, but also at his own cost, a probable cost of *thirty pounds a day*, to make out the amount of such tithes! And was this the prayer of his petition?—No: he sued not for a decree, but for his *dues*:—not for title, but *enjoyment*;—not for an acknowledgment of his right, but for the *receipt* and *possession* of it. Direction to accounts

Having thus far toiled through the lingering litigation, with all the implacable hatreds upon his head, which long competitions ever produce, once more must he wade through the filth of commission-en-Commission of accounts.

modus, as laid; and that, if made out as laid, it could not avail, because *not good in law*;—and yet, in spite of the friendly, the proffered (and, we must consequently suppose, strenuous and repeated) exertions of Sir John Scott, then Solicitor-general, judgment could not be obtained,—indeed could not be obtained at all;—in other words, judgment was not *graciously bestowed* until June 1791.

R

quity.

Tithes.

quiry. Here again are opposed to him difficulties beyond all thought.

Evidence necessary.

The obvious and perfect method of account appears extremely simple—merely to shew the number and value of the acres occupied, the general manner in which they were occupied, and that their full produce was had by the defendants. But the courts require what they term more *perfect justice*, insisting that the claimant shall produce positive and particular proof of every quart of milk taken, every bushel of apples plucked, and every pound of potatoes dug up in each farm, in every year, throughout this length of time; although the farmer has always forbidden to give him legal notice of his times of taking these articles, purposely to prevent his necessary knowledge of their quantities, &c. It is further required of him, when such articles are in dispute, to detail what to him or his servants must have been absolutely invisible—viz.—the exact number of calves, lambs, colts, pigs, poultry, eggs, &c. dropped, laid, hatched, or had, within the farmer's yards, cribs, or out-houses. It is said that, instead of aiming at these impossibilities, he may demand from the defendants an account upon *oath*. What then?—Such is the popular prejudice of the day, that defendants, it is notorious, would exult, both in their own minds and the applause of their neighbors, could they, even by means of perjury, be cunning enough to defraud the parson. This kind of evidence, though suffered to be decisive, is indeed unworthy the name of evidence, and not admissible in other cases. The defendants have before repeatedly declared, in their answers upon oath to plaintiff's charges—that they kept no accounts to enable them to reply with *precision*; but now, they venture to account to the best of their *recollection and belief*. Such evasive account determines their own debt, although the vicar, without half a dozen disinterested vouchers, demonstrates that, from the best

Farmer's own testimony decisive upon his own debt.

best of *their* belief, and from the *well-known value* and quality of the farms in question, they must have suppressed half their produce.

All this time, the offending party—the parishioners are permitted to fight him with his own money; and at last, always leave him, in a great degree, unpaid. To prevent this manifest wrong, and to put the parties upon some footing of equality in this particular, if the courts of *equity* must necessarily be so tardy in their decisions, it would be only bare justice to appoint a receiver, from the commencement of the suit, who should be ultimately accountable for the full value of the tithes in question, and be paid for his trouble by the losing party. Or, as the vicar, whenever he can fight through the contest, commonly substantiates his claims—as he is always to be found in case of failure, as his property is known, his living not fugitive—as the annual pittance to be paid by each individual is generally trifling—where would be the impropriety of permitting him to receive the tithes in the first instance? Instead of this, the law suffers the parishioners—persons perhaps of little or no property—many of whom are often insolvent before the conclusion of the suits—many others withdrawn to places unknown—and all of them have probably paid the full value of the claimed tithes in their rack-rents, under a loose promise from their landlords of standing tithe-free, and are therefore at last unable to account for the aggregate of twelve or fifteen years tithes—so withhold their tithes, to the certain wrong and probable ruin of the parish-priest.

Courts should put in a receiver for the tithes.

Suppose the decree to be adverse to the vicar's claims; which, whatever may be their foundation, is, from modern manœuvre, highly probable!

Solicitors are now usually advised by the practisers at the equity-bars (and they rarely refuse the dishonorable advice) to file a number of cross-bills at once against the complainant, for the pretended purpose of establishing moduses, but for the real purpose

Tricks countenanced to distress the clergy.

Equity in full
possession of all
proofs, yet will
not decide on
facts.

pose of intimidating him, by delaying the course of justice and aggravating the expence of the proceedings. Thus (say the farmers) we shall probably be able to bring the matter before a jury, with whom we cannot doubt of success, as the interests of all laymen are opposite to the claims of the clergy. This is the daily language of both the owners and the occupiers of land; and we see their reasonings but too often verified. After a poor vicar has born all the burdens of equity, has by the exertions of years at last, as he thinks achieved the object of his undertaking, he is suddenly doomed to certain destruction,—is referred to a county-jury for the proof of some facts,—as courts of equity will not decide upon facts, although by their own order, and for that express purpose, by the expence of many hundred pounds to the plaintiff on a commission, put in full possession of *all possible proofs* appertaining to them.

Partiality to the
farmers.

The defendants pleadings are perhaps wholly unsupported by their proofs; yet, as their counsel contend that a provincial tribunal must be the best judge of the customs of their neighborhood, and that they *have their witnesses*, which they doubt not will prove the facts in question fully to the satisfaction of that judicature—such declarations induce the court to direct an issue: thus the parson is left to be disposed of by a jury of prejudiced farmers, and thus are these defendants suffered to withhold evidence before commissioners, thereby rendering the long and expensive process in equity of no effect, and all this at the cost of the man, who has done every thing the court required of him!

In these cases, it is demanded of the parties to substantiate their answers by evidence, and they ought at their peril to do so, upon their commission. Such defaulters are the persons, who have rendered the proceedings fruitless; upon whom then should the expences fall?

With

With what colour of reason or justice can courts of equity procrastinate decisions* by sending the parties to a jury, who are interested against the claims of the church! But so it is: and, inexplicable as it may seem—however well the evidence in support of pretended moduses is controverted by the plaintiff, even to evincing the perjury of the respondents;—however contradictory their proofs may be, some swearing to one modus and some to another, —all these circumstances carry no balance in the scales of equity: “all these, say the courts, serve only to draw a cloud of doubt and confusion over the business, which it is the province of a jury alone to develop.”—Which, in plain English, amounts to little less than this—“*the parishioners cannot make out a good modus themselves, we will therefore give opportunity to a jury to make one for them.*”

Pretended moduses too much countenanced.

Numerous are the objections to a jury impanelled from the spot, where any question of an important local tendency is in agitation. The passions of the multitude are easily inflamed, consequently any selection from that multitude is improper. One of the parties is generally popular; the other odious or unknown. The language of the law is—where an evident interest in a question arises through a whole county, that question must not be tried there, but in another county. Surely then it cannot be too much to assert that provincial juries are very incompetent to the fair decision of tithe-claims. It is laying a snare for their consciences, and placing them in a situation, which may be said literally to invert the petition of the divine founder of our religion—by *leading them into temptation*. When justice is

Objections to a jury of the vicinage.

County juries not honestly competent to try the rights of the church.

* The judges in equity receive requisitions of justice, as the Dutch in the year 1780 took Sir Joseph York's accusatory memorial—ad referendum. In a word—the laws of this kingdom seem to be supported by the same artifices as the religion of Rome—English lawyers and Romish priests equally study to be unintelligible.

Tithes.

opposed by self interest, the task of judging is too trying to our natures.

If, from a long continuance of the same money-payments, a *modus* is admitted in exclusion of tithes in kind,—as such tithes became annually due at a *certain period*, surely it is but just that there should be a *fixed time* for the payment of such *modus*, at the peril of the parish! If *moduses* can acquire an establishment from the *inadvertency* of the clergy, they ought to be liable to forfeiture from the *neglect* of parishioners. Equity does indeed demand a nominal time of payment, and it is merely nominal. There is little obligation upon the farmers to *observe* such time; for, if it is not paid for sixty years together, it is of no consequence; they run no risk of losing the privilege: village-tradition can renew it at any time. Nay, if they have omitted to pay, until at length they know not what the payment should be, it is not material,—the parson cannot *prove* that the tithe was *ever* taken in kind, though it is well known that ab origine it must have been so paid; and it appears from a confused mass of contradictory evidence that *some* small money-payments have at different periods been made in lieu of the tithe; it must therefore remain with a jury to say whether they be not entitled to a *modus*, and what that *modus* is,—to define for the parish an original real composition, which has existed, as their verdict declares, nearly *six hundred years*, although, as appears from the parochial records, *without the knowledge of the parishioners*.

The fiat of a jury creates a *modus*.

A trial *per pares* not allowed the clergy.

It may be reasonably asked why the clergy should be excluded a trial *per pares* any more than any other order of men? “When the crime (says “Beccaria) is an offence against a fellow subject, “one half of the jurors should be peers to the accused and the other to the person offended.” By the 8th Ed. III. enforced by the 8th Hen. VI. ch. 29, it is enacted that “when either party is an alien
“borna

“ born, the jury shall be one half denizens and the
 “ other aliens.”—This is called a jury de meditate,
 and is founded in justice. Shall then foreigners ex-
 ult in that grand palladium of British liberty, and
 the British clergy alone be denied their *native* privi-
 lege? In the beginning of the American dispute,
 it was the proposal of ministry, to fetch over any of
 the colonists, who had shewn opposition to *taxes*
without representation, to be tried in England,
 because, as they said, *no jury in America would find*
them guilty, the people being all of one sentiment upon
that subject. If then the rights of the clergy must
 be thrown to the consideration of a jury, it seems
 just that they should, in all cases, be entitled, on
 their own demand, to a *special return*. This would
 bring their claims to the decision of men, equally un-
 known and indifferent to either party. This would
 afford some rational hope of redress, and restore that
 balance of justice, which now inclines with so much
 evident partiality against the claims of the church.—
 It is in the metropolis, if any where, in which tithes
 are little known and less felt, that an impartial jury
 can be only looked for, with any hopes of success.
 And what objection can be urged?—An attorney,
 when arrested, has the privilege of laying the venue
 in Middlesex *—why not the clergy?

Clergy should be
 entitled to a
 special return.

Blackstone says †—“ jurors may be challenged
 “ propter *affectum*, for suspicion of bias or partiali-
 “ ty: a juror may be objected to for being of kin
 “ to either party within the *ninth degree*; for hav-
 “ ing an interest in the cause; that there is an
 “ action depending between him and the party;
 “ that he is the party’s master, servant, counsellor,
 “ steward, or attorney; or of the same *society* or
 “ corporation with him. These are principal causes
 “ of challenge, which, if true, cannot be over-
 “ ruled; for jurors must be *omni exceptione majores*.

Challenging
 jurors.

* See Pope v. Redfearne.

† Vol. III. p. 363.

“ There

“ There are also challenges to the favor, where the party objects only to some *probable circumstances of suspicion*, as acquaintance and the like.”

Juries then ought to be composed of men superior to all suspicion; men, in a word, without any just exception. But, is this pretended,—will any man assert it, of juries, which try the rights of the clergy? Must not, on the contrary, in all instances, even the whole array be liable to peremptory challenge propter *affectum* * ?

It is not necessary to shew from the reporters what is the general result of such references; common sense sufficiently points out the natural consequence of sending claims to be tried by men, who have a decided interest and an habitual prejudice against them. With as much propriety may we associate the pigeon and the hawk, or the lamb and the wolf.

There is another remark in Blackstone† so very apposite to this part of the subject, that it ought not to pass unnoticed. “ If justice be not done to the crown, by the verdict of a jury, the necessities of the public revenue will call for the erection of summary tribunals.”

* By the late bill for preventing traitorous correspondence with France, power is given to an Attorney-general to bring the accused to trial in the Metropolis, though the presumed crime was committed in Cornwall. Here a man may be compelled to drag a body of witnesses three hundred miles from their homes and occupations, when the purity of public justice, as we have a right to contend till the contrary be proved, might be duly supported by a verdict of the vicinage, and that monstrous mass of expence be saved, which now, whether innocent or guilty, may be his ruin.

On the contrary—respecting the clergy, the fact stands confessed, that the provinces are avowedly hostile to their claims. King’s Bench, 26 Jan. 1792. In the case of Button against Etheridge for a libel, the plaintiff, a magistrate of Grays in Essex, assigned, as the origin of the dispute, that defendant was a clergyman, and that “ on account of taking tithes in kind, the gentlemen of the county had set their faces against the whole tribe.”

† Vol. III. ch. 23.

On this principle, government in the collection of its taxes, has often deemed it expedient to adopt not only a very violent mode, but a mode in direct opposition to the spirit of the constitution, by conferring peculiar powers upon excise-officers. Under the impresson of the same idea, some remedy should be devised to relieve the clergy, which might be at the same time effected, without violence to the constitution or injury to the people.

To oppose the frauds and offences of various merchants, and manufacturers against the revenue-laws, it has been thought necessary to institute a very summary method of enforcing very heavy penalties. A man may be convicted in two days time in the penalty of many thousand pounds, without even admitting an appeal to an independant tribunal. The trial by jury is set aside by a most absolute jurisdiction, which is granted to commissioners and justices of the peace, officers, appointed by, and removable at the discretion of the crown.—It should be observed, that tithes are as much a part of the national revenue as any other tax whatever; that tithes are that part of it, which government has, by the divine sanction appointed for the support of it's ecclesiastical officers, who must have a support from some part of the public purse. The only peculiarity belonging to tithes, arises unfortunately for the clergy, from the circumstance that the very men, for whose use they are instituted, are the persons *directed to collect them*. This has operated in a very invidious manner against them,—has rendered most of them very languid in collecting this tax, and has at the same time made parliament wholly inattentive to the feebleness of the powers under which they act in the collection. No pains or penalties are provided for frauds in the payment of tithes, except in the solitary instance of the 2d and 3d Ed. VI. c. 13, to which it is very rarely advisable for the clergy to resort: while the letting of a news-paper to read is punished with a penalty of fifty pounds.—To pillage

Summary methods to prevent frauds on the revenue, &c.

No penalty for frauds in the payment of tithes.

Tithes.

a meritorious subject is a petty misdemeanor; to defraud the national treasury of twopence is a high crime.

It has lately been resolved in the house of commons that the trial by jury cannot be admitted in the excise of tobacco, under the idea that juries would rarely enforce the tax in that vigorous manner, which is necessary to the wants and rights of the state; a supposition perhaps founded in fact, and that fact naturally originating with the first imposition of the inland duty called excise*.

Trial by jury
more exception-
able in tithes than
in excise cases.

Experience has shewn the name of an excise-officer, however honest in his private character, to be odious to the people at large, and that they will catch at any possible opportunity of punishing him. This is exactly the case with the clergy. Their claims, partially levied upon the labors of the people, are now generally and justly abhorred, and men of all classes exult in opportunities, however wrongly selected, of shewing that abhorrence. The trial by jury is much less admissible in tithe-disputes than in the excise, since to juries, possessing any portion of reflection, it must appear that a smuggler is a common enemy, a robber of every individual, and therefore the united efforts of the community are demanded to put a stop to his depredations.—But, even this consideration is not found to possess sufficient weight to make it preponderate against the detested word *excise*; while, on the other hand, the clergyman, the best friend of the community, is treated as the enemy of all, because he has some petty demand on the property of all. Here then popular prejudice renders the trial by jury inadequate to the administration of equal justice.

* Such was the opinion of its general unpopularity, that when, in 1642, "*aspersions* were cast by malignant persons upon the house of commons, that they intended to introduce excises, the house, for its *vindication* therein, did declare that these rumors were false and *scandalous*, and that their authors should be apprehended and brought to *condign punishment*." The very next year an excise was established.

If there arises even a threat of fraud upon any other part of the revenue, law after law is enacted from session to session, without the least hesitation or delay. Every natural, or constitutional right must yield to revenue. The country swarms with spies and informers to protect it. Conviction is sure and summary. The punishment is outlawry and death*.

If such measures be absolutely necessary, as it is said, for the due collection of the public money, they are à fortiori necessary in collecting the revenue of the clergy, because they have no resource, while the minister for the time being, can always obtain new grants to make up deficiencies. Nor need the establishment of a summary jurisdiction in behalf of these men be liable to the two great objections—of its being appointed by themselves—and being absolute in power.—Suppose commissioners, under peculiar qualifications, and subject to peculiar penalties, were appointed by parliament, to determine all tithe-disputes—from whose decisions an appeal should lie to the house of lords alone;—would not such an establishment obviate most of that disgraceful procedure here recited? By releasing tithe-claims from the trammels of Equity and the prejudice of juries—whether the much expected commutation took place or not—something like justice might be expected.

No remedy decreed to relieve them, though the necessity is so obvious.

Proposition of appointing commissioners, &c.

No one will be hardy enough to contend that the practice of the courts, to which the clergy are now compelled to apply, from a proper judicature to investigate the rights of men, who have only a *life-estate* in their property? Can it be supposed that men in their senses, who, upon an average, have to expect only eight or ten years possession of their estates, will resort to a court that may *hear* perhaps, but will rarely *determine*, their complaints in that period †?—

Observation on the practice of the courts.

Is

* See the accumulation and extreme rigor of the excise-laws under the various heads of candle-making, soap-boiling, starch-making, &c. &c. &c. &c.

† The suit of Davie against Lord Brownlow was nine years pending in courts of justice. Rayn. p. 847. As to expence—

Is it right that the promulgators of the blessed gospel should spend the whole time of their ministry in litigation with those very persons to whom they are sent as preachers of peace and patterns of benevolence?—to whom they are presented as examples of meekness, gentleness, and forbearance?—to whom they preach patience under oppressions, advising them “*Not to go to law, but rather to suffer wrong * ?*” What a seeming handle is here for sarcasm?—What a sneer does this afford our sectaries?—How does the legislature here put a weapon into the hand of the levelling republican to aim a blow at that religious establishment, which is so closely connected with its own existence!!

Objections to
trial by jury well
founded.

That the necessity of a summary court, resulting from the just objections to the trial by jury, in support of tithe-claims, is too well founded, is in proof from the daily practice of the clergy, who, (ever floating between Sylla and Carybdis) to avoid those destructive rocks, are obliged to run upon the dangerous shoals of equity. No other alternative is left to them; and this is, at best a hopeless, too often a ruinous expedient.

Highly (says Blackstone) as the people of England venerate the trial by jury, we frequently perceive, where justice is not administered to their entire satisfaction by a jury, they will appeal to the arbitrary and expensive tribunal of equity:—and this is the case with the clergy, who are obliged, however reluctantly, to have recourse to the courts of equity, in tithe-claims. That, which is acknowledged as the great barrier of freedom to others, is transformed to

it has been shewn, in the case of Travis and Whitehead, that the vicar, a claimant on the public justice of his country, paid more than sixty six years purchase for the recovery of a right, of which he was only tenant for life. Nor is this a singular case;—there scarcely ever occurred an instance to the knowledge of the bar, in which the recovered tithes paid the present incumbent for the enormous expences of a hard-fought tithe-cause. What encouragement to vicars!!

* 1 Cor. xiv. 6.

an engine of prejudice against them; and they have no other resource, but, like the Swedes oppressed by their nobility, to throw themselves into the arms of a despot, to escape the threatened mischiefs of petty tyrants.

An incumbent, under the present prolixity of forms and protracted chicane of *equity*, to which alone he can look for the least shadow of redress, must be blessed with a length of days, if he lives to see his rights ascertained: he must also be possessed of no inconsiderable fortune, if the expence of contest does not reduce him to beggary.

Nor is it certain that even here he will be suffered to shelter himself from the terrors of a jury. After submitting to all the distressing delays and overwhelming costs of equity-process, yet, if his opponents have held out any particle of plea, or maintained the least degree of plausible defence, however obtained,—an issue is directed, and a jury (the dire object of all his apprehensions) is at last to decide upon his claims. And this may always be fabricated with the utmost facility.

At common law, it is not allowed to state one case in the declaration and prove another by evidence. In *Equity*, as practised against the clergy, the defendants plead any thing in the outset that may possibly afford them an issue; and, when the trial of that issue takes place, are artfully prepared to support a very different custom, wholly unheard of by the claimant, and consequently, with respect to evidence, wholly unprovided for: from whence it follows of course that they carry their point. But is this placing the parties upon a fair and equal footing? Or is it ever practised against any other claims than those of the church*?

It

* "It has been every where observed, that no sort of men have made head against those things which have been called the rights of the church, with more zeal and indignation, than lawyers and secular courts." Burnet's Rights of Princes, c. 8. Religion, they know, opposes their mal-practices; they, in self-defence,

It is a rule in law, and the lawyers call it an excellent rule, that "either party must prove his own averments:" but in the trial of moduses all rule is disregarded. The parishioners have hitherto proposed one averment, but are prepared at the proper moment to produce another, which the parson cannot be provided to meet *. Can even a *learned* man's reason defend these repugnancies?

Exceptions in
favor of the ex-
cise-laws.

In suing an exciseman, or custom-house officer, no evidence can be given upon the trial, but respecting the matter contained in the notice: "and if the action be brought for a seizure, though even the plaintiff recover a verdict, and no matter how great the sum, yet the judge may certify so as to prevent the plaintiff ever recovering more than *twopence*; for, by the 28th of the present king, c. 37. it being certified that there was probable cause, no greater damages can be recovered, nor can the plaintiff recover his *costs*, notwithstanding the judgment of his peers in his favour †." So far is the trial by jury annulled in favour of these useful gentlemen.

It is urged that "the indulgencies granted to parishioners are allowed for the sake of substantiating strict justice, which is not to be lost by mistaken pleadings."—*Mistaken* pleadings!—Consider what time has elapsed, from the institution of the suit to the day of its hearing. Four, five, and sometimes

defence, oppose the teachers of religion. They will not endure virtue, because virtue cannot endure them.

* Upon the appeal to the Lords, in the case of Travis and Whitehead, they were pleased to reverse the favorable decree, obtained by the vicar; and ordered the modus to be tried at law, "because the evidence given of it on the depositions in the court of Exchequer, was *unexpected*, and a *surprise* upon the parishioners, and ought not to have been admitted, there not being a word said about it in the *bill*, nor was it therefore put in issue in any manner, so that the parishioners had no opportunity of making any defence, or contradicting the parson's evidence relating to it." Rayn. Introd. p. 123.

† Schieffer's practice.

fix years. And, were defendants possessed of any honest plea, might they not have produced it, or should it not be incumbent upon them to urge it, in a less period than this?—How is it possible for them at all to *mistake*? If they have a legal *modus*, must they not, or ought they not, to know what it is? Were they ever possessed of any valid exemption from tithes on this score, was it not their duty to have annually and regularly paid it? And, had they so paid it, how could they possibly hesitate and mistake in pleading it?—On the other hand, if, through a sacrilegious principle, they have withheld even the poor pittance of a customary payment, till at last they know not what that payment should be, what do they deserve for their dishonesty?—What less ought they to suffer than a forfeiture of that privilege, which they have so shamefully abused?

Evasion and
subterfuge coun-
tenanced in
equity plead-
ings of which
the object is to
establish mo-
duses.

Nor must the observation be omitted, that an immediate decree in favor of the complainant, in such cases, would not amount to the *loss* of the pretended *modus*;—would not amount to that due punishment of defendants, which their dishonesty demands; since, according to the present practice, bills are filed, not to establish the *right* to the tithe in kind, but merely to force an account of what is due for such tithe for time past: so that a very peculiar indulgence, an indulgence more than just, is still held out to defendants. viz. a liberty to urge any very different plea—to contend for any other custom, however contradictory of their former oath, in relief of their property against similar tithe-claims at any future period. But, with what shadow of justice—with what appearance of truth, are persons thus permitted to swear to one *modus* this year, and another the next, for the same article? Shall it be allowed them to combat the claims of their priest, upon one ground during the first half of his incumbency, and upon another through the remainder? Where can he discover the termination of his anxieties—where the end of his expence—

Bills filed not to
establish the
right to the tithe
in question but
to produce an
account, &c.

Expence and de-
lay to which the
clergy are ex-
posed.

where

Tithes.

where the recovery of his right or the conviction of his mistake, if he was in mistake, when he sued for his tithes in kind,—if pleas, which destroy the validity of each other, are to be adduced in endless rotation, and oaths are to be sported with in the public face of justice, to ensure the ruin of his fortune and destroy the tranquillity of his mind * ?

Final consequences.

If an evidence in our common law-courts swears to two events irreconcilable with each other, it annuls his whole testimony ; but two moduses, one of which must be a palpable *falsehood*, may be pleaded in their turns, and that plea, which best suits the interest of the parish, shall be received to the ruin of the parson ; who, exhausted with the fatigues of law, mortified with the hatred and derision of his parishioners,—with whom he hoped to live in a state of peace and love,—sinks disgusted into the grave, which decides the contest, by freeing them from him and his demands together.

If we adopt the brighter side of the case, presuming that, for the present, he escapes this common foe,—presuming him, in short, to recover the utmost object of his wearied search ;—what is the eventual return ? His spirits broken, his property reduced, his best days passed in anxious suspense

* The acknowledged rights of the church are at present extremely similar to the corporate rights of voting for members of parliament : and the contradictory and complicated state of these is fully evinced in the instance of Saltash. Since the year 1772, the right of suffrage in this pitiful place has occupied the attention of no less than five committees, and is still open to dispute. In 1785, it was determined to be in the corporation, and the candidates, returned by them, were declared duly elected. Soon afterwards, a new election brought the question again before the house, when the right was determined to be in the burghage-holders, and the seat was given accordingly. By these opposite decisions, two members sat in the house three years, each denying the pretensions of the other, and the house having, at different times, decided against both.

Such absurdities will ever result from an adherence to precedent in lieu of principle, from a preference of local custom to general law.

and debasing embarrassments, instead of reward, he meets disappointment; instead of enjoying, through the poor remains of life, any real acquisition from his honest exertions, he discovers his gain to be an injury, and has to remark with the old Roman general, that his success has ruined him;—like Wolfe, he falls in the arms of victory, and is most gloriously—*undone*.

And what is the situation of the parish-priest, appointed to his office for far other ends, during the continuance or after the decision of these disputes, compelled by pains or penalties to residence in a neighborhood, where he meets every kind of indignity, where his property is abused, and even his life threatened and endangered? Having endured all the injuries of law, the delays of equity, and the many vexations inseparable from a state of litigation—should he have proved unsuccessful, vulgar minds never bear their triumph with moderation, he is scoffed, derided, and despised: if victorious, he is detested, shunned, and calumniated. A general confederacy takes place against his happiness and a general aversion to his official duties.

The vicar's situation equally deplorable in victory or defeat,

Would it not then be politic and humane to abolish the statute of Hen. VIII. against non-residence, as it in no degree answers its intended purpose, but merely holds out a handle to the worthless part of parishioners to insult and maltreat their ministers.

Many cruel occurrences of this kind might be stated;—many of their maiming and destroying his cattle, and setting fire to his barns and stacks of tithe-corn. Hundreds have been the instances, where the rancorous malevolence of parishioners has extended even to prohibit all neighboring butchers from selling their vicar a joint of meat, and bakers from supplying him with a loaf of bread. They inflict punishments, if he does not reside; and starve, or murder him, if he does.

Personal injuries to the clergy.

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Observations on
non-residence.

The absence of lay-officers from their personal duties is no evil, though they appoint no efficient substitutes; but the non-residence of clerical officers, even where no failure of duty can be imputed, is so great a national grievance, that every subject is empowered both to redress the neglect and to punish the man.

Residence not
required of the
laity.

In consequence of a motion in the lord's-house*, respecting the absence of military officers from Minorca, it appeared that out of nineteen only five were left on duty in the island, at a time when the invasion of it, was threatened by Spain so publicly that all Europe expected it.

Miseries of resi-
dence to the
tithe-claimant.

The non-residence of the established clergy has long been a favorite handle of complaint with our sectaries. In many instances, it notoriously arises, not from any dislike entertained to dwell on their respective cures, but from a well-founded *fear* for *their lives*, during those contests, into which they are compelled to enter for the procurement of a just subsistence.

There are also various means of rendering life miserable, which are in fact a greater cruelty than destroying it: and to these the new demands of the parish-priest will daily render him obnoxious.

But is it not shocking to every sense, not only of religion, but even of common humanity, to reflect that at least *nine tenths* of the clergy live either in this state of judicial contest, or in that of secret disagreement with their parishes! An exchequer suit is what the wealthy alone can encounter†; and the considerations now stated, generally operate to prevent even most of these from thus engaging in such disputes. The consequence is that *Moduses*, or cus-

* Deb. Lords 69.

† The privilege of suing in forme pauperis, amounts to nothing—it is a mere mockery. No person is deemed a pauper in law, who is worth 5l. besides his cloaths.

tomary money-payments, in lieu of tithes, are now daily obtaining, although in direct opposition to the restrictive statute of Elizabeth.

Adverting, a moment, to our sister-kingdom,—how do the sufferings of the parochial clergy there cry aloud for some commutation in lieu of tithes!

Wrongs of the
Irish clergy.

Excited by that popular vote of usurped authority, which denounced the man, who should dare to demand agistment-tithe,—the most valuable, because the most general, claim of the vicars;—and encouraged by other unjust restrictions upon the dues of the church;—the frequent insurrections of the right-boys have rendered every hour of a resident clergyman's life a recurring period of direful apprehension. Plunder, assassination, the despoiling his property and the maiming his person, are rewards of him, who breathes only patience, meekness, and brotherly kindness.—The preacher of peace exists in terror and tumult: the teacher of love encounters nothing but wrath and hatred: the publisher of life and immortality has murder awaiting his very footsteps, and weapons of assassination brandished against him by some new foe with every returning midnight.

To present a gentleman with an Irish living, at any distance from the metropolis, is sending him among savages, little more refined in their manners, towards him at least, and if possible more barbarous in their prejudices, than the natives of New-Zea-land. His life is the lot of the felonious exile. Hard and unequal distribution!—To administer a similar fate to the man, who exemplifies the moral obligations of virtue, and the wretch, whose repeated crimes have justly rendered him an outcast from his country!!

Their lives a life
of exile.

Dreadfully numerous as these instances of shocking cruelty and wanton barbarity have been, particularly in one quarter of the island, they but the

Necessity of a
commutation.

more clearly demonstrate the necessity of a Protestant priesthood dwelling constantly among them, and by the pure precepts of the Gospel, with the exemplary lives of its promulgators, softening and soothing them into humanity *. To this great end, it is certainly the first step to comply with their prejudices, and to establish some other mode of maintaining the clergy than that which carries with it such general offence. Until this is done, the laity will ever live in rancour and the clergy in fear;—state equally incompatible with the exertions of the one and the edification of the other †.

In England, the milder manners of the people have indeed prevented the *frequency* of such shocking outrages; but melancholy facts of this kind are to be traced even here also. However, it is amply afflictive to a man of reflection to perceive himself exposed to the wrath, the hatred, the malice of those, from whom he, by law, derives his sole support; and who, if they cannot invent some plea of honest *usage*, as a method of *legally* withholding from him the means of decent maintenance, will hourly embitter them with threats, alarms, insults, or injuries.

National consequences of ill
treatment of the
clergy.

Under these circumstances, can it be matter of wonder that Christianity is daily losing ground among us? Can it be any longer a subject of surprise, that we hear of so many more thefts, robberies, murders than formerly; that we observe a general dissolution of manners; when such conduct is encouraged, and even children are taught to execrate the very name of the parish-priest, because

* “ The increase of popery is complained of in Ireland, is there a better way to hinder it than to place able clergy among the inhabitants?”

Archbishop Laud on his trial.

† The increase of popery is complained of in Ireland; is not the reason obviously imputable to this cause?

the

the pressing claims of his family will not suffer him patiently to submit to the frauds of their parents?

He, who can survey these sad truths with unpitied emotion, "must have the heart of a lawyer, pampered by the distresses of his fellow creatures."

CHAP.

CHAP. VI.

The necessity of a commutation in lieu of tithes, further urged and plans and regulations proposed &c. — Observations on the late provisions made for the clergy in Canada — On the necessity of a provision for superannuated clergy and their families &c. — On the corn-laws, and the general oppression of the present state of the law of tithes upon all parties — Popular clamors against the clergy answered and refuted, particularly as to pluralists, with observations on civil pluralists — Calculations as to the incomes of the clergy, individually and collectively — Attentions and amendments proposed — The present state of tithes compared with the former state of the revenue of the crown — Claims of the clergy upon the justice of the country, and the object pointed out for which they ought to petition parliament.

SUCH, as has been stated, is the present condition of the much boasted provision for the ministering servants of our national religion; *once*—a truly admirable establishment, as being equal to the dignity of their sacred functions; both securing them from the reach of ignominious poverty, and enabling them to extend their influence alike to support the sufferings of the body and to sooth the sorrows of the soul. They are now, alas! in too many instances, themselves the objects of that bounty, it was once their better fortune to bestow.

It is the pointed remark of a learned counsel of the first eminence in our courts of equity that, if some more summary and compulsory mode of recovering clerical dues is not adopted, the refusal to pay tithes of all kinds will soon be general throughout the kingdom.

Speaking under the impression of the known temper of the times, tithes are an unreasonable, an absurd,

The revenue of the church formerly ample &c.

Tithes, without a summary method of recovery, will soon be universally refused.

furd, as well as an incompetent provision for the established church, if for no other reason than that their produce is dependant upon the will (*the ill will*) of their respective parishioners. And so generally is this the fact, that it is well known the great land-owner will often throw his estate into a park, or plant it with timber-trees, solely with a view to distress the parson. Numerous are the instances of men suffering their lands to lie waste, merely for this perverse and impious purpose.

Tithes, besides the fraudulent means adopted by many to avoid the payment of them, are become, even from modern expensive modes of agriculture, a very *unequal* tax; in some cases, amounting to no more than two shillings in the pound, in others to double the rent*; and too generally, it must be confessed, falling with an increase of weight upon the most industrious and deserving.

It is the complaint of the laity that they are never at ease in their possessions;—that they know not the full dues of the church;—that the clergy frequently start claims, which have lain dormant for a century: such are undoubtedly very unpleasant circumstances to landed property; but it must be observed—they result not solely from the clergy, nor are at all peculiar to their order. The same particulars, and in a more serious degree, frequently occur to the laity, where, in the purchase of such property, sufficient attention is not paid to the validity of title: and, as the original demands of the church are generally well known, it is the business of purchasers to obtain full

Unpleasant circumstances incident to tithes.

* The present land and window-tax demonstrate similar inequalities. To the latter an old dwelling, upon much ground, but having little habitable room, with numerous ill constructed lights, is enormously rated; while a modern building, in every respect doubly valuable, pays little or nothing. Equal justice demands this tax to be incorporated with the house-tax, which would at once render it more productive, and save the whole expence of commissioners, assessors, collectors, window-peepers, &c. &c.

Tithes.

previous information on the subject, or their duty to abide with patience by the consequences, as the result of their own folly, and certainly without any possible imputation of an oppressive spirit in the clergy.

This consideration ought to protect the priesthood from that odium, which a late publication, called—"Tithes indefensible"—anxiously endeavours to affix to them, in the cases of Breary and Manby, of Blair and the parishioners of Burton-Coggles, &c.

Further hardships on the clergy.

It is the clergy that have the strongest grounds of complaint! According to the modern distinctions and refinements of the equity-courts, tithes in *kind* may have been paid through the whole of the last incumbency, whatever was the extent of it,—and yet the parishioners be free to set up pretended moduses in bar of the claims of the new rector, on the vague allegation of traditionary interested testimony, although perhaps he had vacated very valuable preferment, on the just expectation of receiving the same emoluments as his predecessor. Many latent prescriptions may exist in a parish, protecting particular estates from tithe of agistment, obtained through mere continuance of the same small money-payments at a period, when nearly the whole was employed in tillage and breeding: should any little pique arise between the new rector and his parishioners, the ploughed lands are all laid down, and the parson impoverished at pleasure. This may indeed be effected without changing the mode of occupation,—because, say the courts, the act of the tenant is in no case to prejudice the property of the landlord.

Necessity of commutation.

The complaints on all sides evince the necessity, either of a general commutation, or at least some given fixed rules, by which moduses may be generally determined.

It would indeed be a blessing, both to the public and the church, were a nullum tempus bill passed respecting

respecting these claims. But, before this could be done with justice to the legal rights of the clergy, a disinterested, cheap, and summary tribunal, should be first appointed, to investigate and decide upon their demands, and, as a preparatory measure, the value of cattle and lands in the different counties, and of our present money, at the time of legal memory, should be previously ascertained.

Most manifest is the indispensable necessity of some kind of commutation. It has been shewn, in the progress of this short review, that the national religion is most intimately connected and *allied* (in the language of Warburton) to the welfare of the state;—that its ministers are not those turbulent fanatics, not the political enthusiasts, not the frantic zealots, who have heretofore convulsed our national councils and arrogated a power superior to the law of the land; but men, in their own persons practising, and in their daily precepts pressing upon public notice the duty of obedience to the civil power;—men, whose great business it is to direct the observance of those duties, which are alike immediately essential to the comfort of individuals, the security of the state, and the very existence of society.

If then such are the benefits of our religion,—if such the services of our church-establishment,—the man, who is inimical to the clergy, inimical to the persons, who are the immediate servants of the executive power, who watch over that branch of the British constitution, which in all periods has given birth to the most dire convulsions than England ever experienced,—whatever he may call himself, is no friend to his country!!

An enemy to the clergy no friend to his country.

Since the clergy are a *necessary* order of men, since the legislature has thought it requisite to the support of that learning, upon which our religion is founded, to deny them the practice of any other profession or employment;—it is bare justice to insist that they ought to be considered as the devoted

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servants

servants of the state, and be paid accordingly;—in other words, that they are entitled to receive a respectable national support, which, in the present disposition of things, can only be accomplished, with safety to the state and honor to religion, by a *commutation*.

Necessity of a liberal income to the clergy.

It has been well observed that, from the present amount and disposal of our ecclesiastical revenue, the invitation of young men to the universities, by temporary exhibitions, scholarships &c. &c. is “a pious fraud,” inducing them to adopt a profession, from which they cannot afterwards free themselves, and in which they are not allowed any competent subsistence. But is not this as unworthy and degrading to the state, as injurious to the just expectations of individuals? Is not this another proof of the positive necessity of a certain and liberal income for the parochial clergy?

An exciseman, or a tide-waiter, complains that fifty pounds a year will not maintain him;—his complaint is deemed just, and his salary augmented: while the incompetency of forty, and even thirty pounds, to the decent support of a clergyman’s family, though constantly urged, not by the priesthood alone, but by men of every class and description, receives no kind of attention.

Provision for the clergy in Canada.

The quantum, for the provision of the clergy in Canada, lately ordained by the Quebec bill, is one seventh of all the lands granted by the crown. This Mr. Fox thought too much; but the minister observed that the lands to be assigned, would be chiefly new land, and therefore not likely to afford too profuse a support, at *least not for many years*. True;—but fifty years hence perhaps, when the clergy shall have enclosed, stubbed, drained, manured, and built upon their allotments, the minister of the day may think them too well provided for, and the people deem it no breach of public faith to seize their possessions. When the clergy reflect upon the perfidious appropriation of

church-property by our last Henry, they have much reason to demand some security for the enjoyment, before they exert themselves in the labor of husbandry, and sink their private property in the expences of such improvements.

The public stipends of the ministers of religion ought to be liberal, both to preserve their persons, and consequently their ministry, from contempt,—and to render their office worthy the ambition of superior minds. It has been held out as a maxim—that “no order of men can long maintain their place and authority in a mixed government, of which the members do not individually possess a respectable share of personal importance.” And this is not inapplicable to the clergy. The decline of their incomes, with other circumstances of oppression, has reduced the dignity of their character in the eyes of the multitude; from whence they have lost much of their necessary influence, and are consequently less able to discharge their public duties with their wonted advantages to the community. To the justice of this mode of reasoning the executive power has often borne testimony, in the military order. In the case of *Flarty v. Odium**—It was determined that the creditors under the lord’s act may compel the debtor to include in his schedule every thing that he *can sell for his own benefit*. But the half-pay of an officer is not an object of sale; and therefore the creditors cannot compel him to include it in his schedule. Ld. Kenyon, Ch. J. said emoluments of this sort were granted for *the dignity of the state*, and for the *decent support* of those persons who are engaged in the service. It would therefore be highly *impolitic* to permit them to be assigned; for persons, who are liable to be called out in the service of their country, ought not to be taken from a state of *poverty*. It might as well be contended that the salaries, which are

The requisite personal importance of all orders of men in mixed governments.

Flarty and Odium.

Half-pay of an officer not an object of sale &c.

* See Durnford and East Rep.

granted to support the dignity of the state and the administration of justice, may be assigned. Buller J. "On principles of *policy* an officer ought not to be permitted to sell his half-pay." This point was also since determined in the same manner, in the case of Captain Kennedy, a bankrupt, by the late chancellor, Thurlow. And does not the same reasoning apply with at least equal force to the clergy? Such are the arguments in behalf of the sons of the sword; do the sons of the church merit less of the public? Such are the exertions to support military officers; are not the clergy also public officers?—And are not their duties equally important?

Vicarages in some instances augmented, &c.

According to Watson's calculations tithes afford no decent provision for the clergy.

It is true, in some places vicarages have been considerably augmented by portions of the great tithes; and these augmentations were much assisted by stat. 29 Car. II. c. 8. enacted in favor of poor vicars and curates, which rendered such temporary augmentations, when made by the appropriators, perpetual.—But still, we are confirmed by bishop Watson, and other calculators, in this fact—that tithes, as now paid, afford not a decent provision for the clergy.—That far the greater part even of the beneficed part of the order cannot obtain a stipend equal to the emoluments of the menial servants of a private gentleman. And it is of little consequence from whence the *cause* arises, since the *effect* is obvious—whether it results from the vast number of impropriations—an endless train of prescriptive claims, originating in the supineness, negligence, misinformation, love of peace, poverty, or fear, on the part of the clergy,—or whether it more immediately proceeds from the present fraudulent disposition of the people, or the official execution of the laws,—it is an incontrovertible melancholy truth that at this day the national establishment for the support of the church is totally incompetent to maintain it with decency. This alone, exclusive of the invidious manner in which it is received, is abundantly.

abundantly sufficient to justify these functionaries in an application to parliament for some other provision. It does indeed daily afford new ground of reprehension to neglect it.

This demands
an appeal to
parliament.

It has been seen that, in parishes of any extent, the full produce of any tithe in kind cannot now be *collected*: and, if such impossibility of collection exists at this time, much greater must it have been, when tithes were first received in this country. At that period, the whole kingdom, with respect to roads, was in a state of nature, and little intercourse could in consequence be maintained with the distant parts of an extensive parish; from whence arises an additional proof in support of the inference—that tithes must originally have been *paid or presented to* the clergy, and not left to be collected by themselves. One general observation will suffice to convince every impartial reader of the truth of this fact—that, to demand of the minister *himself* to *collect* his tithes, militates against the divine principle of them as an *offering* to the Deity, and the civil establishment of the clerical character, which indispensably demands the dereliction of all the cares of worldly life. But, be that as it may, the utter impracticability of collecting them fairly on one hand, and the frauds and disputes to which they give rise on the other, clearly evince the necessity of some equitable commutation.

Proof that tithes
were formerly
paid to the
clergy.

The best informed members of the first French national assembly have denominated tithes “an odious and impolitic exaction:” odious they must consequently be, as now paid, because they fix the whole burden of maintaining a religious establishment on one class of men, to the exoneration of all others—they form an “unequal taxation, which is “a monster in a free government;” impolitic as a support for the church, because they not only degrade the priesthood in collecting them, but are an insufficient maintenance when collected.

Tithes an unequal tax, &c.

Tithes

A discouragement to agriculture.

Tithes are a great discouragement to agriculture, which is the grand source of the purest and best population. They are a tax, not only upon industry, but upon that particular industry, which feeds mankind;—upon that species of exertion, which it is the aim of all wise laws to cherish and promote. So highly invidious has the tithe-demand appeared of late years, that we have had many instances of men being perverse enough to let their lands lie fallow, merely for the revengeful purpose of robbing the rector of his corn-tithe; and of others, who have planted their pastures, on purpose to deprive the vicar of his portion of agistment. In short, tithes are the foundation of innumerable quarrels between priest and people,—a perpetual source of strife and ill-will,—a mode of maintenance, which at the same time irritates the party paying, and gives no satisfaction to the receiver. Neither is the produce of it, under the present laws, equally enforced with the collection of all other taxes.

An invidious claim.

Their produce uncertain.

It is much to be lamented that this impost upon landed property, for the support of the ecclesiastical establishment, is not paid in the same manner as the land-tax. Experience loudly calls for such a measure. The assessed amount of the land-tax must be raised in every parish, whether the land be or be not occupied.—The clergy are left a prey to the purse-proud caprice and wanton curtailments of every unprincipled neighbour*.

Tithes should be paid in money, as other taxes.

In the instance of hops—at the approach of the picking-season, the excise-officers of the district have regular notice given them, and they consequently

* A few years since, a lately titled tyrant (well known in Cumberland, Westmoreland, &c.) entertained a pique against a clergyman, to whom he had given a living on his estate. He could not recall the gift, but as the terms expired, he refused to let the farms; the lands therefore, being uncultivated, yielded no tithes: consequently, the rector's family was left to exist (as the grazier, in bar of agistment-tithe, swears his cattle do)—on *air and exercise*.

attend

attend duly to observe the quantity gathered. So also in the making of bricks, &c. &c. This is not unlike the law in tithe-claims; but, it is observable, the excise-officers do not take any stated quantity of the *article in kind*; they are paid in money: and for this reason—the article, being difficult to collect, requiring also servants, horses, carriages, warehouse-room, and long attendance, would not be of half the value, which they now receive without risk or trouble. The claims of government can neither be denied or delayed; they therefore take the rate, instead of the commodity. And do not these considerations apply with equal force to the claims of the church? Must not the daily concern of collecting, receiving, storing, managing, threshing, and carrying corn-tithes to market, perhaps at a vast distance, necessarily render the clergy secular, contrary to the intention of their original establishment and adverse to the interests of the people?

Present mode of payment renders them secular.

Were a general commutation to take place, not even extending further than to compel the farmer to pay the value in money, instead of the article itself, it would be highly beneficial to both parties. In corn-tithes, the farmer would retain his manure in the straw, for the future improvement of his land; while the rector would be released from cares, which are incompatible with his office; and find his revenue considerably augmented. The nation at large would be also greatly benefited; for, as tithes are received in many small parcels, from various crops, which must necessarily be put together for a market, they are therefore deemed mixed grain, and never bring the price of other corn;—that full price, the farmers individually could afford to give for them. Thus, in this very important article, and still more so in some others, there results an injury to the public, merely from the tithe's passing through the hands of the clergy.

An injury to the public.

In a late official representation upon the present state of the corn-laws, it is justly remarked, that the production

Observation on
the corn laws.

production of corn is the first and most important occupation of the subjects of every country, and on its success rests the main support and prosperity of every other trade. For the sake of the consumer, therefore, the most liberal encouragement and protection should be given to those employed in it; for, without offering proper incitements to their industry, plenty can never be procured.

Scarcity of corn,
&c.

We cannot but observe, that the scarcity, of the year 1790 amounting to almost a famine, in France, was not confined to that kingdom; since no one European state could afford them any essential supply. Spain and Portugal were in great distress, from the scanty crops of their preceding season. England, even immediately after harvest was obliged not only to lay an embargo upon the exportation of corn, but also to open her ports for the reception of foreign wheat. In Poland the price was doubled; so that the very country which usually served as a granary to the rest of Europe, stood in need of a supply. As to Germany, Russia, and Sweden, those powers were at war; so that nothing could be expected from thence.

Consequences,
&c.

In the year 1766 great riots were occasioned in several parts of England by the high price of corn. Again, in the summer of 1773, great riots and a very serious emigration of useful subjects from Ireland and Scotland took place. If we may judge from the present price, which after a very full and favorable harvest, is comparatively low, there is yet reason to say that the produce is not such as we have a right to expect; nor can it ever be otherwise, while we find a great increase, not of tillage, but of pasture-lands, attending the increase of population among us. The English are the best farmers in Europe, but they want that encouragement which an exemption from tithes would give them.

As a further proof of the necessity of freeing the corn-trade from the oppression of tithe-claims, in the
Report

Tithes.

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Report * alluded to, it is stated, that for eighteen years past the quantity of corn, which before that period was considerably more than what was necessary for the consumption of the inhabitants of this island, is so far diminished, that our markets are dependent on other countries for their supply. This is a natural consequence of levying any impost on a particular body of men, which ought, in pure justice, to be borne equally by the community at large. Who would be a farmer and pay a tenth of his produce, to the maintenance of the clergy, when there are many occupations, which now through lapse of time, or the artifices of their respective followers, evade every kind of payment. *This*, surely demands legislative consideration, and is a strong argument in favor of a general commutation for tithes. It is necessary the clergy should be supported, but it is not necessary that *such* support should operate as a *draw-back* on that very article to which policy, as well as humanity, shews the necessity of a bounty.

Further proof of the necessity of freeing the corn trade from the payment of tithes.

Farmers almost the only people who pay tithes.

Another argument in favor of a commutation.

The voice of public clamor has long been agitated against the varying claims of the clergy. Long has the outcry continued—that nothing is freed from their grasp. Let it then at once be ascertained, what they shall have as a maintenance:—let the public know (it is right they should know) how, and to what extent, their servants are to be supported.

Complaint that the claims of the clergy are indefinite.

One more circumstance from the above report ought not to be omitted. It appeared upon an average of nineteen years (from 1746 to 1765) “that the bare profits of corn exported, produced a net profit of not less than 651,000*l.* per annum.—but in the 18 years (from 1770 to 1788) after making deductions for duties received, bounties paid, &c. we sustained an actual loss of specie, by our payments to foreign nations of 291,000*l.* per annum.” This for 18 years amounts to 5,238,000*l.*—a sum, one would imagine, sufficient

Profits of corn from the public injury incurred by its decrease of cultivation.

* Made in 1790.

X

to

to alarm government to a sense of the absurdity of the tithe-claims, as paid at present,—and to that revision, which independant of the sufferings of the clergy, is due to its own interests.

The sufferings of the clergy are in general deemed an idle ill-grounded plea. The vulgar are fond of talking of *fat* rectories, overgrown bishopricks, commendams, pluralities, &c. &c. contending that the church, at least taken in the aggregate, wants nothing but curtailment. Such popular, though vague, general, unfounded, and unfeeling charges shall be replied to.

Clergy insulted
by the vulgar.

The ecclesiastical revenue was in former times liberal; but has been reduced to a scanty pittance by state-plunderers; which is yet rendered less by the frauds of the farmers and the pleas of exemption that are daily increasing and encouraged. In proof of this, may be adduced the declaration of the learned bishop lately mentioned, whose accuracy as a calculator, and integrity as a man, is removed beyond all reach of answer or objection. He states the present church-revenue, including bishopricks, deaneries, chapters, and even the two universities with their respective colleges, not to amount to one million and a half annually: and, supposing the whole of this sum to be equally divided among the parochial clergy, “there would not be, (he says) estimating

Popular charges
against the clergy
accused and re-
futed.

Clergy one with “
another do not
receive 75l. per
annum per head
&c.

the number of the clergy at ten thousand, above “ 150l. a year for each individual:”—but it must be observed that we have near ten thousand parishes;—that many of them include one, two, three, and four chapels, which employ occasional, and frequently resident, ministers. Add to this—that few of the beneficed clergy do, or *dare*, reside; but others are obliged to be employed in their duty. Taking these, with the many lecturers, schoolmasters, fellows of colleges, domestic chaplains, and others, who are living only in expectation of employment, into the account,—the number of clergy may reasonably be stated

stated at eighteen or twenty thousand; which reduces the maintenance to 75l. or 80l. a year.

Nor may it be improper in this place to remark further upon the present individual revenue of the church, that Dr. Burn, in his ecclesiastical law, assures us, that "the number of livings capable of augmentation hath been certified as follows—1071 livings not exceeding 10l. a year; 1467 livings above 10l. and not exceeding 20l. a year; 1126 livings, above 20l. and not exceeding 30l.; 1049 livings above 30l. and not exceeding 40l.; 884 livings above 40l. and not exceeding 50l. a year. So that in the whole there are 5517 livings, certified under 50l. a year. To this he adds that, computing the clear amount of Queen Anne's bounty to make 55 augmentations yearly, it will be 339 years, from the year 1714, (which was the first year in which any augmentations were made,) before all the livings can exceed *fifty pounds* a year." So that, supposing a man, from the favor of friends, to be reasonably successful in this profession, what a poor emolument is here, considering the progressive state of necessary expenditure for so long, so laborious, so expensive an education, as must qualify him for holy orders!!!

Observations
from Dr. Burn,
on this subject.

The clergy
worle recom-
pensed than any
other order of
men.

It may be expected (more especially from the author's signature) that something should be said on *pluralities*.

Pluralities in the church have given birth to much ill-founded complaint, though nothing has been ever said on *state-pluralists*, far more injurious to the interests of the public. In the civil arrangements, the same gentleman may be the colonel of a regiment in Flanders, governor of a fort in North-Britain, a member of parliament at Westminster, &c *. The daily prints have recently blazoned two very ample instances.

Pluralities.

Civil pluralists.

1st, A noble lord, governor of Portsmouth, High-Steward of Salisbury, Lord-Lieutenant of Wiltshire,

* The reader is referred to the court-calender, where he may peruse many instances perhaps too trying to his patience.

a general in the army, colonel of the first regiment of dragoons, and a judge in the supreme court of judicature.

2nd. An illustrious Duke, Lord-Lieutenant of Nottinghamshire, Steward and Keeper of Sherwood-forest and Hollwood-park, High Steward of Retford, auditor of the Exchequer, comptroller of the customs of the port of London*, High Steward of Westminster, a member of the supreme court of judicature, &c. &c.

No man can serve two masters, and certainly no one can discharge the necessary demands of different offices, often incompatible in their duties, and requiring attention at the same time in very distant places, without that ubiquity be allowed them, which the law ascribes to majesty. This has been long felt as a national grievance, yet is so far from being redressed, that it has never been made an object of serious complaint or enquiry.

Ecclesiastical
pluralist.

In defence of civil-pluralists, who *sometimes* have no merits to urge,—who probably possess immense patrimonial properties, and *each* of whose offices furnishes a large and liberal income, can be applied no palliation, can be admitted no plea but plunder; their accumulations can be ascribed to nothing but a wanton wickedness, determined to participate in the pillage of the public. While the ecclesiastical pluralist, at least acknowledges but one master,—has expended his little portion of patrimony in fitting himself for his profession,—and (in many, indeed in most instances,) after all his scrapings, can scarce

* The following is the conclusion of a satirical petition of the late Lord Chesterfield, in which perhaps there is more truth than ridicule.

“ Your petitioner, having had the honour of serving your
“ majesty in several very lucrative employments, seems thereby
“ entitled to a lucrative retreat from business, and to enjoy otium
“ cum dignitate; that is, leisure and a large pension. Your
“ petitioner humbly presumes that he has, at least a *common* claim to
“ such a pension, he has a vote in the most august assembly in the
“ world; he has an estate that puts him above wanting it.”

muster the moderate enjoyments of common life.

Until every living be made a maintenance for a gentleman, there can exist no ground for clamor against the ecclesiastical pluralist. Some restraint, it is true, might be laid on the holding of too numerous preferments, such as the addition of deaneries to bishopricks, prebends to canonries, and sometimes three or four of these to two valuable rectories.

Little can be said against pluralities, till every living be made a maintenance.

Something remains in justice to be remarked on the hard fate of the disqualified or superannuated clergy. The military man, when maimed, receives support from his country; but the crippled curate, blind from accident, or helpless from age and infirmity, is left without any resource, than that of begging for himself, after having wasted his strength and health, in being an incessant suppliant for the wants of others. The lawyer and the physician find ample security against the claims of old age and the straits of poverty, in the ready profits of their professions;—the former indeed, having acquired much pliability of opinion, generally, as opportunities occur, joins the band of corrupt statesmen, and shares the spoils of a deluded people.

Would it be an improper request in the clergy to ask also for some maintenance for their families, when the supporter of them is departed? Considering the nature and extent of their services to mankind, do they not appear at least as well entitled to such beneficence, as other public professions? Yet the widows of commission and warrant-officers of the navy receive pensions from the national bounty;—the widows even of masters, second masters, of *boatswains*, *gunners*, and *carpenters*.—The *nation* provides for these; while the poor widows of the clergy are left either to the subscriptional relief of the clergy themselves, or else to divide the *parish-loaf* with those paupers, whom their personal bounty has hitherto contributed to support!!

The clergy entitled to support in age, illness, or misfortune.

The widows of officers, &c. provided for.

Nothing is here meant in derogation of the gentlemen of the navy or other officers so provided for:—

Great

The same reasons hold with regard to the clergy.

Great are their deserts—great their claims upon the public bounty: yet ought it to be observed that, morally considered, in all countries,—and politically considered, peculiarly in our own,—a country dependent upon commerce for its existence,—the man, whose profession is peace, is unquestionably a more useful member of society, than he whose business is war and slaughter,—whose services are commonly exerted to support the lawless thirst of conquest in kings, or to cloak the selfish designs of speculative ministers.

It may, perhaps, be urged, in behalf of military men, that they often lose their lives very suddenly. But this plea is silenced, when we consider that not only they who fall in battle, but they who die in their beds, have the same degree of national favor extended to their families.

Clergy indebted to the musicians &c.

Provision for the late speaker of the house of commons.

Distressed state of the orphans of the clergy, &c.

The sons of the clergy are classed with decayed musicians,—with men who, however contemptible their employment, have always enjoyed a most extravagant requital. We are obliged to the musical performances in Westminster abbey, and other periodical charities alone for maintaining the orphans of the parochial clergy,—the forlorn offspring of men, who have not averaged a support of 40*l.* a year,—who through life have been the immediate servants of God, as well as of the people;—while a late Speaker of the House of Commons,—surely no more than a mere officer of the people, however high that office,—though he enjoyed 3000*l.* a year to the end of life, was thought to merit a very large national provision for his children!

Pity, humanity, and the honor of the Gospel-character must surely shed the mournful tear of the most heartfelt anguish over the female orphans of the indigent clergy. To paint their miseries would be holding forth the poor remains of ecclesiastical honor to the insult of the libertine and the sneer of the infidel. Suffice it to observe that every thinking person must earnestly wish the period to arrive, when the daughters

daughters of men, preachers of morality and ambassadors of heaven, shall no longer, by the poverty they inherit from their fathers, joined to the sentimental education, which the leisure hours of a fond parent has bestowed, be exposed to all the artifices of refined seduction, and become almost the proverbial scoff of the wicked. Till the legislature shall by one noble act raise the industrious part of the order above their present state of absolute want, and their children from that misery and temptation, in which the death of a man, whose whole life has been one continued struggle between hope and disappointment, always leaves an infant family,—till something like this be accomplished, would it not be worthy the attention of the great and the opulent to add one more necessary charity to the many benevolent institutions, which adorn the metropolis—we mean a public voluntary subscription, to give marriage-portions with the orphan daughters of indigent clergymen. Something like this is silently demanded by woes too shocking to bear recital.

No remedy but from the legislature.

Another public charity wanted (viz.) one supported by voluntary subscription for the orphan daughters of the clergy.

Should these observations be ever fortunate enough to obtain the perusal of royalty, how must the idea of being father to an order of men peculiarly distinguished for their loyalty, and supreme head of a church renowned for the purity of her doctrines, the moderation of her sentiments, the ability, and not less for the poverty and distress of her ministers,—how must such a reflection operate as an inducement to patronise some plan for the abolition of a system disgraceful to Christianity!!

The present state of tithes is not dissimilar to the condition of the ancient ordinary revenue of the crown, which was found wholly inadequate to the support of the regal dignity. It formerly consisted of the temporalities of bishops, during the vacancies of the sees,—and other ecclesiastical claims now disused;—demesne lands, forest-rights, wrecks, profits of mines, treasure-trove, waifs, estrays, confiscated estates, forfeitures, escheats of lands, and many other casual

The present state of tithes like the old revenue of the crown.

Tithes.

casual advantages of the same kind, at that period of much value, and productive of many vexations to the subject. Most of these emoluments have been gradually alienated from the monarch, and the remainder yield very little. All these circumstances are also attendant upon the church-revenue. But to the crown the deficiency is now amply supplied, by what is most emphatically stiled the *extraordinary* revenue, established in lieu of most of these ancient prerogatives. Parliamentary interference, in the same way, though on a smaller scale, is certainly *wanted*; and as certainly *due*, to the church. Both cases have originated in the same necessity—namely—the change naturally effected by the flux of time and circumstances; of which the clergy, more than other orders of society, feel the influence.

Contrast between the former and present income of the clergy.

It has been shewn, during the progress of this work, what *was* the income of the clergy, as well as what it *is*. It *was* equal to every purpose of its original intent, equal to their *dignity*, their *utility*, their *benevolence*.—Unhappily it *is* now deficient in all. Their dignity is fallen, their feelings wounded, and their utility impaired. So far from being able to relieve others by their bounty, they are themselves the greatest objects of charity of the present day. They are neglected by the rich, ridiculed by the thoughtless, and insulted by the vulgar.

The church has a claim upon the justice of the country.

The clergy have a strong claim upon the gratitude and justice of the country. In the suppression of the monasteries, the legislature subsequently sanctioned the alienation of a property, the half of which, fairly divided, would have furnished the church with very ample support. To whom then should the clergy look for redress?—And what are their claims?—They would be well pleased with less than their present *nominal* rights,—would be perfectly content with any thing that the wisdom and humanity of parliament might think fit to enact as a certain support.—Their humble petition is only that the established church may have an established maintenance,

maintenance, which, though it is said to be the case at present in *law*, is by no means the case in *fact*. Their only prayer is—that *the bread of the christian priesthood may be the bread of certainty and peace*.

Would be content with any certain support.

For this great purpose,—to procure that harmony between justice and private interest; which is most highly necessary,—to render the clergy more extensively beneficial to the country,—in short, to silence all objection,—it seems absolutely requisite, that the very word *tithe* should be expunged from the English language.—And, as the word *tithe* is hateful to all classes of the laity, the term *modus* is equally, and perhaps with no less reason, disgusting to churchmen. For the peace of both parties it is absolutely necessary, that these words should be erased from our vocabularies. This is no otherwise to be accomplished than by the interference of parliament; and this, perhaps, by an act rather permissive than compulsory; at least compulsory only with respect to moduses. Were these determined upon, the proprietors of the principal estates, who are the most common claimants of exemption from tithes in kind, would become the most earnest advocates for a commutation.

Though the authority of parliament has laid the burden of the reparation of his house upon the shoulders of the incumbent, yet their wisdom has so disposed the weight thereof as to distribute it between him and his successors*, and render it very tolerable to both. If then the competency of the mansion to rectors and vicars alike is an object of national regulation, surely the competency of the poor *vicar's support*, a much more essential appendage to his station, cannot be deemed undeserving of parliamentary inspection.

Parsonage-houses have been a parliamentary object.

Thus have been stated some of the many difficulties and distresses incident to the clergy of the pre-

* By the 17th Geo. III. c. 53—entitled an act to promote the better residence of the parochial clergy, by enabling them to repair or rebuild their parsonage-houses.

See also the 21st Geo. III. c. 66. These statutes are not sufficiently known to the clergy.

Grounds on
which the peo-
ple resist tithes.

sent day in asserting their rights against the prejudice and injustice of mankind. The people would probably oppose any national assessment with the same virulence, was there the same appearance of success.

It is not the clergy, but the clergy's *claims*, that they reprobate: and these they resist with peculiar obstinacy, under the impression of a very true idea that, in the present mode of legal process, the clergy are in no degree individually able to support their respective rights.

No rational ob-
jection can be
advanced to a
commutation.

From hence it is manifest that the tithe-establishment is no longer a kind of maintenance countenanced in this country;—that indeed it has, and is daily giving birth to the most malicious animosities, the most cruel injuries, and the most savage outrages; directed too, against men, who are the controllers of discord, the preachers of peace, the avowed enemies of all injustice and wrong. The just inference is, that a general commutation of some kind ought to be substituted. No rational or liberal objection can be made to it:—the landed interest desires it, the clergy pray for it, the peasantry wish it.—Who then are against it?—The leading law-authorities.—And for what reason?—There can be but *one*, and that is strictly *professional*.

Three distinct
objects for which
the clergy should
petition par-
liament.

Independent of a general commutation, as matters exist at present, there are three particulars for which the church should petition parliament.

1. A certain rule, by which moduses, in point of *rankness*, may be decided upon.

2. A more summary mode of proceeding for the recovery of subtracted tithes; with an allowance of *double* or *treble* costs to the clergy, to put them upon some degree of equality with the combinations they are obliged to oppose, and to curb the general spirit of wanton opposition to their claims.

3. That their rights shall, in no case, be determined by a provincial jury.

These are equally the claims of justice and policy, and therefore *entitled* to the speedy consideration of the legislature.

CHAP. VII.

Plans of commutation proposed and previous measures necessary to be adopted, with conclusive observations, as to the necessity of the measure and the author's object and view &c. &c. &c.

FROM the facts stated, and the obvious result of those facts, with the observations they have afforded in reasoning upon them, it appears to be an incontrovertible proposition that a commutation in lieu of tithes is alike dictated by justice policy and wisdom as a measure equally necessary to the comfort and convenience of individuals and the national happiness and welfare.—*Opinion* is unanimous upon the subject, it *divides* only as to mode and manner.

General opinion as to the necessity of a commutation &c.

It has been said that the commutations hitherto proposed,—all by laymen—have not been adequate to the claims of the clergy. However, it is certain that none of them have offered, what is indispensably necessary, before *any general* commutation can be adopted—namely—an equitable remedy for the many oppressions suffered from the pretended moduses and prescriptions, in some degree claimed by almost every parish throughout the kingdom.

Necessary steps before any commutation can be adopted.

After a slender commentary upon the most specious of these proposals, and having already observed somewhat more at large upon moduses and prescriptive claims, the next object of this work is, to present the outlines of two plans of commutation, either of which, or any other, consistent with their legal interests would satisfy the clergy,—their sole desire being a fair and equitable reform of the present tithe-system. Confident that *any* alteration must be a benefit, they wish not to examine with microscopick eye, or to contend for trifles with anxious scrupulosity.

Argument
against money-
payments.

The grand argument against a fixed money-payment, and certainly incontrovertible, is that money is daily decreasing in value;—so that what now might be a becoming maintenance for a clergyman's family, must be extremely deficient within the course of a century. It is worthy remark, that *this consideration alone* ought, at all times, to have armed courts of equity with a prohibitory reason against all pretended moduses, resting their claim of right on such foundation.

Paying the
clergy according
to the market-
price of corn li-
able to
objections.

Paying the clergy according to the market-price of corn, as many of the rents of our colleges, in the two universities, are now paid, attaches to it various objections. Let it suffice to observe, that this price must be determined by *farmers*, the very persons against whom the tithe-demand lies. But, as this mode of payment has long been in practice, in the recapitulated instances, its positive consequences are well known. Any bursar of a college, so paid, will inform us that there are stated days for taking the price of corn, when the farmers bring into the county-market unusual quantities, and thereby run down its value to what point they please.

Other tithes of
greater value,
if well paid.

Nor can any reason be assigned for regulating the incomes of the clergy by the sale of this one produce of the earth, when there are many tithes (except in a few corn-counties) which, were they duly paid, would be of equal or greater value,—such as hay, hops, milk, agistment &c. Neither is it reasonable to pay them by the price of any *one* product, since they have an equal claim to all the fruits of the earth.

Decrease in the
growth of corn
&c.

Any one product may possibly bear a very low price, while all the other necessities of life are doubled in their value. Paradoxical as this may appear, it is an assertion founded in fact, and a fact immediately drawn from the article in question. It is within the observation of every man, that corn has been, for several years past, the only moderate requisite of family consumption.

The impropriety of adopting the price of this article as a general standard, by which to regulate the stipends of the clergy, appears also in another particular—that is—the great variety in its local value*.

From the disparities of price we learn that the general maintenance of the priesthood cannot be regulated by the varying price of grain alone, because, from the vicissitudes of seasons, casual blights, insects, and a multitude of other circumstances, the corn-trade is subject to much greater fluctuations than any other.

Previous to stating any mode of commutation, it should seem necessary to examine what the clergy resign, by surrendering their tithes; and also what the laity sacrifice, in the dereliction of their pretended modulus.

Estimate of the
mutual sur-
render.

As the first establishment of tithes was a clear *tenth* of all the landed *produce*; this, without noticing the tithe of waste-lands, commons, personal tithes, mortuaries, fees, Easter-dues, offerings, &c. may be reasonably rated at a *fifth* of the fair annual *rental* of all cultivated lands: so that in a common sized parish, where the value of the lands is about three thousand pounds, the tithes would be six hun-

* At the end of July and the beginning of August 1790, the average of wheat was 6s. 10d. $\frac{1}{2}$, and of oats 2s. 1d. $\frac{1}{2}$ per bushel, in the London market; while the former was 8s. 5d, and the latter 2s. 10d. at Derby;—a difference absurdly disproportioned to the family demands of the clergy, resident in those very different situations. Aug. 24th of the same year, wheat was 50s, barley 11. 2s. 9d, oats 16s. 9d, a quarter in Mark-lane; at the same time, in Reading, wheat was 3l. 11s. 10d. $\frac{1}{2}$, barley 11. 4s. 0d, oats 20s. In Nov. following, wheat was at 9s. 9d. per bushel at Hereford; while in Mark-lane it was 6s. 3d. In Jan. 1792, the average price of wheat per bushel in Middlesex was 5s. 4d; in Cumberland and Westmoreland 5s. 9d,—in Caermarthen 6s,—in Cardigan 6s. 1d. In May, 1793—wheat was in Middlesex 6s. 7d,—Devon 7s. 1d,—Brecon 7s. 7d,—per bushel. The last return (Feb. 1794) shews the prices to have been—Middlesex—wheat 48s. 5d,—Brecon 56s. 0d,—Salop 55s. 5d,—Flint 58s. 8d.

dred pounds a year. It will soon be seen what part of this is sacrificed to the plan proposed.

Peculiar and private conveniences of a modus.

It cannot but be acknowledged that the *conveniences* of a prescription, even where there is only one claim of that nature in a whole parish, are much more extensive than a stranger to village-honesty would be induced to imagine. A single farm claims a prescriptive payment in lieu of all tithes: the consequence is that the parishioners, as many of them as can, will take pieces of land in such farm, for the sole purpose of getting hay from thence, or of bringing their cows and sheep to drop their young there, to evade the payment of tithes. It is almost impossible for the vicar to ascertain such frauds, or at least, under the benign indulgence of *modern equity*, to affix to them their proper punishments. Any plan, that does away such practices will be rather a removal of the power of wrong, than a sacrifice of the possession of right.

The judge in doubtful criminal cases, decide on the side of mercy—The same rule should prevail in civil cases.

Nor is it much that the laity really sacrifice in cases, where the modus is doubtful. One observation here demands our notice. In the exercise of criminal justice, the judge always inclines to, and the jury decides for mercy, in all doubtful cases. Ought they not to be directed by the same rule in civil matters? The most that partiality itself can say for nine-tenths of the pretended moduses is—that “their validity is doubtful;” but tithes in kind were beyond contradiction *once* the legal right of the church*. Original right, under the influence of public expediency, ought to be the rule of determination in all doubtful cases.

Case of the duke of Athol selling the isle of Man—in point.

In the case of the duke of Athol, whose father sold the sovereignty of the isle of Man to the crown, the *original compact* of which bargain was immedi-

* Claims of privilege, in opposition to the necessary pastoral support, from a contest somewhat similar to the disputes between power and liberty. Be it observed that power must always be proved, but liberty proves itself; the one being founded on the law of man, the other upon the law of nature,

ately before the eye of parliament, application was lately made for the recovery of an equivalent for certain rights, *unconceived* at the time the conveyance was made. Mr. Pitt contended, on a principle of *honesty*, that "if the Duke had been deprived of any rights and privileges, which were *not in contemplation* at the time when the bargain was made, he had a fair claim on the justice of the house of commons." Now can it in reason be imagined that, when the payment of a penny, in lieu of the annual tithe of a cow's milk, was acceded to, that the parson had it in idea, that four-fifths of his parish would ever be occupied by milch-cows? It is evident, therefore, that the *extent* of moduses should be specified, as a requisite to give them validity. In some cases this principle is adopted.—By stat. 5. Eliz. c. 4. persons, serving seven years as apprentices to any trade, have an exclusive right to exercise that trade in any part of England. But the decisions of the courts have limited this privilege, holding no trades to be within the statute, but such as were in being at the making of it*. If moduses are tried by this rule, how forcibly does it apply to the overthrow of nineteen in twenty of them? Let it however at present suffice to shew that the laity, in a majority of instances, by giving up their prescriptive claims, only restore that to which they have no just title; and which was never originally intended to be held in the extent at present insisted on.

Specification of extent of modus is necessary to give it validity.

Admitting the validity of most of these payments, they do not generally extend to more than half a parish. Here then rests the question. The church-establishment claims ab origine a fifth of the annual *value* of all lands; the laity contend that they have legally (not *conscientiously*, that is not assumed) reduced this claim in a great degree; but the quantum is the point in dispute. There seems but one possible mode of applying a general principle of decision

The general principle of decision.

* *Ld. Raym.* 514.

Tithes.

to this controversy, which is by the conciliatory doctrine of give and take, by mutual surrender and concession. Let the turbulence of worldly passions be fanned on all sides by the zephyr-breath of moderation. Here then draw the line. Be it the wish of the clergy to relinquish half their claim on this account; let them accept a *tenth*, instead of a *fifth* of the value. The reasonableness of this reduced claim, amounting to no more than two shillings in the pound, in a body of men, who formerly were in legal possession of a third part of the whole landed property of the kingdom, will surely be acknowledged.

Proposed alterations and their consequences.

Various alterations suggested &c.

It has been already stated that there would be left, in parishes of moderate extent, an income of three hundred pounds a year. In larger parishes, requisite chapels of ease should be established, and the ministers endowed with a reasonable proportion of the tithe-rents. The patronage of these being vested in the respective rectors, and the very varying value of their several glebes, added to university-honors and prebends, if they are retained, would still furnish motives sufficiently operative as a spur to emulation and the exertions of genius.—Pluralities of prebends should in no case be allowed; nor of livings, unless in instances where the preferment was under 300l. per ann.—It may perhaps be thought right that farms and parishes which enjoy modules, established by legal decision, should not be included in such general settlement; if so, it must be urged on the other hand that those estates and parishes, which have been decreed, or always accustomed, to pay tithes in kind, should be also excepted:—but both these cases, (different as they are) might be provided for without much difficulty, on the general ground of reciprocal surrender.

Manner of payment.

The quantum being determined, the next consideration is the *manner* of payment.

Let an estimate be taken every seventh year by two disinterested commissioners,—chosen, one by at

at least two thirds, in value, of the land-owners, the other by the patron, incumbent, and ordinary, —of the value of the several farms, and be given in upon oath at the nearest quarter-session; and the annual claim of the parson, for the succeeding seven years, be determined by a tenth of that estimate. Disputes arising between the commissioners to be decided if possible by an arbitrator; otherwise, by the court of quarter-session, reserving a right of appeal to the court of king's bench, and allowing double costs (as the means of preventing knavish and wanton litigation) to the ultimate success of the parson.

Thus would the income of the clergy keep pace with the improvements made in their respective parishes, and the varying value of specie; while the farmer would have the opportunity of enclosing and meliorating immediately after the survey, and consequently of receiving seven years exemption from tithes, as a reward for his industry and expence. Our lands are commonly let upon septennial leases. Persons, occupying under this tenure, must thus know to a certainty what sum would be annually due to the church, during their term. All cavils against unexpected demands for dormant tithes would be at an end. There would be a general termination to those disgraceful bickerings between the clergy and their parishioners, and joy, peace, tranquility and brotherly kindness would succeed in their place.

Happy consequences &c.

The church-wardens and overseers (supported by the power of distress, and, in case of a landlord's seizure for rent, the effects of every farm being answerable for one year's tithe-composition) should collect and be responsible to the resident clergyman, whether rector or curate, on stated days, for the quarterly payment of the tithe-due, receiving fourpence in the pound for their trouble in the collection. In this case it would be requisite that a proportionate number of these officers, should be appointed by the minister: and from hence it may be reasonably supposed they would generally be persons of far greater

Church wardens to collect and be responsible &c.

Z

respectability

respectability than those who at present generally fill such offices.

Quarterly pay-
ments.

Paying the clergy quarterly would prevent a multiplicity of disputes between them and the executors of their predecessors. At present it often happens that a rector dies in August or September just after harvest is severed or got in;—in which case his executors receive *all* the tithes for the year, though the successor performs a considerable portion of the year's duty, and must wait near twelve months before he partakes *any* of the profits.

Consequences,
&c.

As, in this case, the rector would have no demand on the farmer's crops or stock, as heretofore, the latter would in particular grow more corn and keep more sheep, both which at present are thought to pay an excessive tithe. Here the farmer would find his account; and the nation at large would be highly benefited, by the great increase of its two most valuable productions. An increase in the exports of bread-corn, manufactured corn, flour, and oatmeal would be the natural consequence,—a circumstance, which is indeed a grand national desideratum. The decline of our exports in these articles forms (as has been shewn) the great burden of complaint, in the report of the committee of council, who examined into the state of the corn-trade in 1790.

For the encouragement of the growth of flax, it was found necessary to fix the value to be paid for the tithe; which is the very principle of this general proposal. Such indulgence was thought sufficient to promote the growth of this article; the same may, with equal reason, be supposed likely to increase the produce of wheat, wool, and other articles, which are the true source of our national wealth.

The introduc-
tion of so much
grazing in preju-
dice to the culti-
vation of corn, a
great evil.

The tracts of cultivated country, that have from time to time been depopulated of an industrious peasantry—and the total expulsion from thence of the plough-share and sickle, to make way for the horned wealth of the grazier, form the source of

mischiefs most dire to the poor, particularly of our distant counties.

The necessity of peeping into pig-sties and hen-roosts would be at an end.—That anxious, scrupulous minuteness of attention (disgraceful not indeed to the clergy, but highly so to the laws that make it necessary, though the vulgar have not discernment to make the proper distinction) would exist no longer. The causes of mutual discontent would be done away, to the common ease and satisfaction of all parties.

In parishes and townships unenclosed, and such as are possessed of sufficient tracts of common, it would be the means of encouraging enclosures—a matter of no little moment to the community—were the clergy, by a general act of parliament, permitted to accept allotments of such land, in lieu of their tithe-assessment.

Encouragement
of inclosures,
&c.

Giving land in lieu of tithes, would in these instances be a commutation the least burdensome to the people, and the most beneficial to the clergy; though we know a late great law-authority to have been against it; but upon what grounds has never been understood, nor is it worth enquiry. His lordship might imagine, as is most certainly true, that it is the inclosure of pasture-lands only that promotes population; but that the enclosure of lands in tillage, which is commonly followed by converting a great part into pasturage, must diminish the number of people, because the peasantry of that parish can no longer obtain their customary employment. To obviate this effect, parliament might grant its sanction to a severalty, which would answer every proper purpose; at the same time prohibiting enclosure. It may also be imagined that, although the public grievance, which the law calls mortmain, has no longer a direct existence in the case of lands held by the clergy; since at this time “no services, due of such lands, and which at the beginning were provided for the defence of the realm, are wrongfully with-

Land in lieu of
tithes, &c.

Tithes.

The clergy
would become
exemplary farm-
ers.

Generally good
farmers at pre-
sent.

Glebe lands well
cultivated, &c.

“drawn,” yet an injury accrues to the public from hence—that men, who have only a life-estate in such property, will not contribute, as they ought to the cultivation and improvement of it. This is an objection, however just in its application to the holding of lands by the crown and by some lay-corporations, has no foundation against the clergy. The bodies of this order grant leases of a sufficient length to encourage improvement, and the private individuals have a general pride in holding up both their tenants and themselves to their parishioners as patterns of agrarian policy. However, this is a particular that might be fully secured by law. It has been urged that the habits and office of the clergy are ill suited to the occupation of farming; and that the expence of stocking a farm would often be a very serious objection. To which it may be replied that all rectors are now, and are of necessity, absolute farmers; but were their tithes exchanged for land, and that land (except such portion as the patron and ordinary might deem necessary for the rector’s use) regularly let upon an assured septennial lease, both this objection would be removed, and the clerical tenant would be duly encouraged to improve his holding. This would also silence another general objection—“that a needy incumbent might, by ploughing, exhaust and impoverish his lands, and thereby very much lessen their value to his successor.” But this is an injury that has rarely yet existed; though in many livings there has long been ample room for it. The fact is otherwise. We almost every where observe the glebe to be the best conditioned land in the parish. Whatever part the incumbent has in his own hands, he generally piques himself upon nursing and keeping in better order than any grounds of his neighbours.

Admitting this possible evil, many are the means of preventing it. Might not church-wardens and overseers be *ex officio* trustees for the lands belonging to their respective churches? Or might not the
office

office of rural-dean be extended to take cognizance of dilapidated lands, as well as decayed buildings?

There are certainly various ways by which the clergy might be restrained from injuring their successors. And in the present state of the produce and population of our island, we are bold to say, that to give land for tithes, where it can be had so as to form a compact and convenient tenure, is a measure promissary of the utmost benefit to the nation. The cultivation of land would to the clergy become an object of pleasure; the best, and perhaps the most religious occupation for the leisure-time of good men. They have in general a thirst after universal knowledge; are very extensive enquirers, and close observers; men, who under the present pressure of adverse circumstances, have given birth to the best improvements in agriculture; and who would most probably, were they thus encouraged, and their pursuits so directed, as such property must direct them, soon display a zeal, as well as abilities, to increase both the value and quantity of our best agrarian produce.

Policy therefore, as well as religion, is interested in such commutation. Nor does there exist an objection in any degree to counterbalance its great promise of public good.

Such commutation alike dictated by policy and wisdom.

It is also to be observed that the legislature has lately thought land,—land unfenced, uncleared,—land in the rudest state of nature,—that must demand an expence much beyond the probable power of the clergy, during the first twenty years, to draw from it any competent produce,—a proper revenue for the church of Canada;—while the English clergy are left with the most poignant regret to observe that all parochial enclosure-bills, principally intended to exonerate the lands from tithe-claims, by giving an allotment to the rector, are uniformly opposed and scouted in the Lords-house. Such commutation has been heretofore a frequent, and, the event has shewn, a wise practice. One fact is indisputable

Enclosure bills.

putable—namely, that wherever this has taken place, under a full examination and just acknowledgment of the rights of the church, both parties have ever been perfectly pleased with the exchange.

Universal reform
generally con-
tended for.

Thus far has this work proceeded upon the principle of drawing the church-revenue from the same sources which support it at present. It is contended by many, and indeed upon the ground of right, that an universal reform ought to take place; not only a reform in the manner of paying tithes, but also a change in the persons by whom they shall be paid; that no inhabitant of our country can justly refuse to contribute to the maintenance of the national church, because it is an establishment, not indeed so much for an ecclesiastical, as a civil purpose; an establishment, like all other public appointments,—for the general service of the state. Do not the trader and the stock-holder, it is asked, owe as much to the bounty of heaven and the protection of the state, and are they not full as able to contribute to the exigencies of the one, and to evince their gratitude to the other, as the poor, and laborious farmer?

The more equal the contribution is levied, the less it will be felt. A national church must be supported by some means: now, as it is established for the benefit of all, all ought to contribute to its support. What it is the duty of all to perform, it is both absurd and impolitic to compel a part to accomplish. And where is the expediency,—to say nothing of the justice,—of extorting the church-revenue from the diurnal toil of rustick industry, while the wealthy stock-holder (comparatively a useless member of society) bestows nothing from his abundance?

The partiality of
this tax, &c.

The peculiar partiality of this tax has of late been clearly perceived by the people. The same objection certainly lies against the poor-rates, and land-tax; of which in general the merchants and manufacturers are the first cause, giving birth to a burden, which

which they leave others to support. But it is to be observed that these levies do, at least nominally, extend to the stocks of trade; although, for want of a specified mode of computing the value of such property, it is not made contributory. And such is the consequent weight of these taxes, that, unless something be done to mitigate it, the most dire effects are certainly soon to be apprehended.

SECOND PROPOSAL.

Second Plan.

From the present produce and disposal of the church-revenue, it is most earnestly to be desired by the parochial clergy, that government would take to itself the whole, as has lately been done in a neighboring kingdom, and appoint from the exchequer such stipends to the several orders, as in their wisdom might seem right. Thus annulling the tithe-claim in toto, would be no other than strict justice to the people; since, from the first principle of tithing, as well as of right reason, all kinds of property and persons were to pay tithes, though many of them have found ways and means to evade it. Let the clergy then be paid as the law-officers are; and thus would the burden be generally and fairly laid.

Government to take this and pay certain stipends out of the Exchequer, &c.

In this case, it would be requisite that such provision should in its establishment be so instituted, as to keep pace with the decreasing value of money. Although the stipends, it may be said, would of course be augmented from time to time on this very account; yet observation presents but too much reason to conclude, that such augmentations would not keep pace with their cause. If, in the case of an individual,—the speaker of the house of commons—such addition was delayed, till at last it was thought expedient, at one step, to double his salary—to raise it from three to six thousand pounds—how much more tardy may we expect government to be in increasing the stipends of a body of ten thousand persons?

The decreasing value of money to be regarded, &c.

sons? This ought to be provided for, by enacting that the sufficiency of such money-payments should be reconsidered at stated periods of time.

It would be necessary also that it should be proportioned to the different wants of the clergy. The stipend of every incumbent should be regulated by the price of the necessaries of life, the price they bear in the country where it is his duty to reside. This would be, by the same act rendering justice both to priest and people. It would furnish the incumbent with the proper means of life, and at the same time probably punish him for non-residence.

Non-residence
would carry with
it, its own
punishment.

If the country rector—being a man of private fortune—chooses to spend more than half his time in the metropolis, where most articles bear an extravagant price,—paying him according to their value among the people with whom he ought to reside, would oblige him to supply the deficiency from his patrimonial purse.

General average
of the market
price of grain.

A general average might be made yearly of the market-price of grain, hay, cattle, &c. in the different bishopricks or counties. The ratio of these, in each, to the present value of money should be calculated, and every succeeding year's payment be regulated by the statement of the last. The account to be registered in the bishop's prerogative office for the inspection of the clergy. To this it would be right to annex an annual average also of the price of stocks.

Thus, the income of the clergy, being governed by the price of the leading articles of landed produce, in their several districts, and the public value of money, would be regular and at all times sufficient. It would be their interest to reside upon their respective cures; their salaries being apportioned to such residence.

Resulting ad-
vantages, &c.

When the general advantages resulting from the promotion of agriculture,—the suppression of trading justices,—the raising of the clergy in the estimation
of

of the people,—the influence such a measure must have on the morals of the kingdom at large;—when these are seriously considered, the legislature cannot deem the sum thus expended to be ill applied. It would be worth the experiment, were it to gain no other purpose than the rendering ten thousand persons a public boast and a national ornament, who are now, from the poverty and hardships they suffer, and the litigations in which they are engaged,—the pity of the wise and the reproach of fools.

Having fully laid down the rector's provision, it remains to enquire what more may be done in behalf of the needy curate.

Where the rector, being a clerical person and unemployed in his office elsewhere, absents himself six months in the year, his resident representative should retain half the year's profits: where he is absent three months, the latter should receive one third.

This would both enforce and invite residence. At all events, there should invariably be a resident clergyman in every parish. Hence would arise a strong inducement to the beneficed clergy to reside, as it would insure to them a proper society, even in the most distant counties. And be it observed, residence will, in all instances, be much better promoted by inducements, than by penalties.

Observations as
to residence:

It would surely be a proper tax upon non-residents. It would much augment the stipends of the lowest class of the clergy;—would enable the bishops to refuse orders to all such as have not taken one degree at least in one of our universities,—and thereby both add to the learning and consequently increase the respect, due to the church.

At present it is a fact well known—that our bishops are obliged to ordain almost any one that applies for orders, because there are, particularly in the more distant dioceses, numberless vicarages and cures so paltry in produce, as to be greatly beneath the notice of well-educated men.

A a

But,

Impropiators.

But, upon what ground do our bishops suffer impropiators to pocket several hundred pounds a year from the tithes of a parish, while the officiating minister receives only fifteen or twenty pounds for all the duties of his office *? The same question applies, though not quite with the same force, in

* It is enacted by the 15 Ric. II. c. 6. that vicars shall be *sufficiently* endowed: again, by the 4 Hen. IV. c. 12. it is ordained that vicars shall be *sufficiently* endowed, and for these three express purposes,—“to do divine service, to inform the people, and to keep hospitality.”

Before the dissolution of the monasteries, the exercise of ordinary jurisdiction in this particular appears beyond all question. The acts of dissolution say that the king shall enjoy the monasteries and tithes in the *same manner, form, and state*, as the religious did, *saving all rights and portions*, which any may or might have had in or to the premises, or to any part thereof, in such manner, to all intents and purposes, as if the said acts had not been made.—Hence it is argued, that the vicar always having had a right to a *competent* portion out of the rectory, with a right to sue the abbot, if he denied it,—and the bishop a right to assign and enforce the payment of such portion; both the bishop and the vicar have those rights preserved to them in the general savings; and the lay-owners must hold their impropriations subject to the same charge:—that the meaning of the parliament was not to destroy the rights of other men, but only to suppress the monks.

Notwithstanding all this, nothing is more peremptorily delivered throughout the books of common law, than the contrary doctrine. See Bur. Ecc. Law. Vol. 1. p. 78, 79.

It seems requisite very often to remind the conscientious professors of law that there are certain ordinations, founded in those relations of justice, that existed in *the nature of things* prior to all positive precept, which Blackstone (perhaps, with all his failings, the most estimable man their fraternity can boast) honestly observes—“being dictated by God himself, are superior in obligation to all human laws:”—Among these is found the title of every public officer to an honorable maintenance, according to his rank in society. In the present instance, if such maintenance is no longer to be received from tithes, which were originally established for this purpose, the ingenuous gentlemen, it is hoped, will tell us from whence it may be demanded.

The wealthier sons of the church are, in reason, called upon to contest this point in a court of equity, in behalf of their injured brethren: and, though he cannot be ranked with them, the author of this work offers all its profits in aid of this just undertaking.

case

cases of appropriation *. But might not both these terms be spared from the English language, as well as the two already proposed for obliteration?

Let all deaneries, prebends, and sinecures drop into oblivion, as fast as they become vacant—their patronage (except that of the crown or colleges) be given to the bishop of their respective dioceses, and their revenues return to the parochial clergy.

The disposal of deaneries, prebends, &c.

For the reduction, though not the abolition of these, we have the recommendation of episcopacy itself—the Bishop of Landaff's letter to the Archbishop of Canterbury; which also proposes in some degree to equalize the bishopricks, and thereby do away the necessity of our bishops holding rich rectories in commendam—"a practice (to use his lordship's own words) which bears hard upon the rights and expectations of the inferior clergy."

It may perhaps be urged that our bishops would not like, nor would it be decent, to be deprived of so great a part of their court; and that, by destroying such preferments, the just rewards of superior merit and long service are taken away. Are these, alas! often given as such rewards? If not, the objection is absurd. Nor let it be forgotten, that pluralities, in a small degree, would still be open to supply such rewards; and that academical honors and emoluments, which *are* generally thus disposed of, would still await the rightful expectations of genius and erudition. In populous towns, there should allowed very liberal surplice-fees, which would produce a just difference between the stipends of such places and those of the desolated agistment-parishes,—would furnish the additional subsistence requisite to enable

* It appears, from the case of Hitchcot and Thornburgh, H. IX. car. that the ordinary may oblige appropriators to augment vicarages. Gibs. 722. 2 Rol. Abr. 337. But, from the entire *desuetude* of the practice (says Burn,) the ordinary's power seems at least doubtful. Ecc. Law. Vol. 1. p. 77, 79.

The propriety of things has no connection with practice. The custom of centuries cannot ratify wrong; nor can *desuetude* diminish a right,

the minister to bear up against the persuasive influence of fashion and the proud aggrandizement of trade. Add to these that archdeacons might be made residentiaries, with more real recompence than at present:—and an answer is given to both these objections.

Impropriations
bought in, &c.

Were the first proposition adopted, impropriations should be all bought in, valued according to their present produce. Allowing impropriators nothing for dormant claims could not be thought an injustice; since it would take nothing from them, would deprive them of nothing for which they can pretend to have an equivalent. Let it also be remarked that hardly any of the considerations, which have ever operated in the breasts of successive incumbents against attempting to recover such property, can in any degree be urged in behalf of the indolence of lay-men. This ground is alone sufficient upon which to contend that, whenever the legislature shall exercise its humanity and justice in asserting the rights of men, who, in the present state of things, are unable to protect themselves, impropriators can have no claim to such vindication. The observation also applies to appropriations, should it be found necessary to retain any of these for the support of our bishops, archdeacons, college-fellowships, &c. In cases of vicarage endowments, the apportionate value of all tithes recovered by the suppression of moduses, should go the vicar. Where there is no endowment, at least fifty pounds a year, and more as circumstances might require it, should be allowed for the maintenance of a minister.

A appropriations,
&c.

It will naturally be asked—from whence could a fund be formed to pay for such purchases?—The proposal has been already made, viz. the total—or (should it be more approved of) the partial suppression of honorary preferments, sinecures &c,—which would, in no small degree, render purchase unnecessary.

May

May not Queen Anne's bounty afford a further degree of reply to this question? Could it be more properly employed than in the purchase (if they are to be bought and sold, as the fact is) of impropriations, which operate alike as a reflection upon the justice and a check upon the prosperity of the country, as well as an unjust and impolitic curtailment of the established church. By reannexing these to their respective vicarages, the vicars, in their own persons, would be enabled to recover many rights and tithes, which between the present disputed claims of impropriator and incumbent, are not paid at all.

Queen Anne's bounty.

The management of the bounty-fund has long been arraigned: but surely the integrity and due attention of those great and good prelates who are entrusted with the disposal of it, cannot be justly doubted! Yet, would it be satisfactory both to the clergy and the public, were they to publish an annual account of their proceedings, and the state of their capital.

Was, however, the bounty employed, as is here suggested, all crown-livings, augmented by its means, should resign an alternate patronage to the bishops of their several dioceses; and thus, vice versa, with respect to livings augmented by the diminution or abolition of dignities in the gift of the crown. Great would be the addition to episcopal patronage from the adoption of this plan. It would not therefore be other than right, to tack a condition to that part of it, which would be increased by the application of the first fruits and tenths—viz.—that they should present their oldest curates to all livings thus augmented. Were our bishops obliged to present such persons to all livings under a stated value, in their present patronage, (which, to his everlasting honor be it named, was the practice of the late bishop of St. Asaph) it would surely be no more than what (according to the general rules of professional progress) his long standing is fully entitled

Patronage in the bishops &c.

Restrictions &c.

8 to,

Tithes.

Consequences
&c.

to. This would also answer a variety of good ends ; in particular, it would induce this order of the clergy, from their first entrance upon the profession, to consider themselves interestedly circumscribed by the diocese to which they were ordained. This consideration would commonly confine them to the very parish they were first placed in. And, without doubt, a long residence must naturally endear the minister to his parishioners, and thereby add to those reciprocal kindnesses, increase that mutual regard, which is most highly essential to the peace of the public, the promotion of christianity, and the well being of the state.

This measure
does away pre-
sent disgraceful
practices &c.

This, as it would prevent the emigration of this class of the clergy, would also in a great degree do away that most abominable and disgraceful practice in our metropolis of sending in their address to a public notary, and thus exposing their sacred ministry to hire, like a livery-servant at a register-office. How degrading the idea—that a gentleman, after a liberal, an expensive education, shall be reduced to the necessity of attending three or four days at a public office, to obtain the appointment of reading prayers ; to perform which he travels, through all weathers, from one end of the town to the other ; and for which he receives the sum of 2s. 3d,—the office-keeper stopping three pence as his fee.

The church has
some right to
resort to the na-
tional purse.

Should not these means prove sufficient for the due recovery of impropriations, as the present are apparently not times for the church to hope for much from the pockets of the people, let it look to itself only in order to effect so great and good a purpose. Let the first fruits and tenths be doubled ; or let something be borrowed from three or four of the overgrown bishopricks. Not that it would be an unreasonable expectation in the church, to look for some assistance from the national purse, for this purpose. As, at the time that the alienation of tithes took place, the clergy were altogether helpless, were reduced by the tyrannies of the monarch
to

to a state of the most wretched degradation; in hourly fear for the remains of their property, and therefore totally unable to stand forth in their own defence. To whom then should they have looked up for protection, but to the legislature? Successive parliaments connived at the usurpation. Nay, the leaders in both houses at length condescended themselves to participate in the spoils of the altar; and thus was the property of the priesthood wholly sacrificed at the shrine of speculation. The income of the church was divided from the duty of it. The Levitical portion was given to those who were not Levites.

Parliaments connived at the lay-usurpations of tithes &c.

Yet, though such parliaments grossly betrayed their trust, it is contended to be by no means unreasonable for the parochial clergy to expect redress in this particular from the state, in the present more enlightened, though perhaps not more religious age.

In the beginning of the reign of Ch. I. a voluntary society was established for raising contributions to be employed in the purchase of impropriations, which were to be reunited to their respective churches—a scheme, which met with such support that—"it is incredible what large sums were advanced in a short time towards so laudable an employment. It was verily believed, (if not obstructed in their endeavours) within fifty years, rather purchases than money would have been wanting unto them*." But the trustees, abusing the public confidence, were prohibited by the court of exchequer from proceeding in this business. The decree commended the design, but reprobated the ill conduct of it. "Touching the buying of these impropriations, the court thought it a pious work. But the defendants had purchased divers impropriations, but never restored one of them to the church, by conferring it in perpetuity to

Subscription to purchase impropriations.

* Fuller's Ch. Hist. cent. 17. b. 11. p. 137.

" any

“ any incumbent ; but kept them in their own hands, and disposed of the profits to such lecturers and ministers, and in such proportion, and for so long time, as they pleased : and had bought advowsons of churches, nominations of lecturers and school-masters, which the court conceived was not in the intention of those that gave the money for buying of impropriations.”

Under a proper establishment, and an upright agency, this purpose might perhaps, even in these times, meet with some degree of patronage and support, more especially, were the clergy to manifest themselves earnest, at their own expence, in the promotion of so good a design*.

Ld. Bacon's opinion, as to impropriations.

The great lord Bacon says—“ It were to be wished, that impropriations were returned to the church, as the most proper and natural endowments thereof. In my own opinion and sense, I must confess that *all* the parliaments since the 27 and 31 of Hen. VIII., who gave away impropriations from the church, stand in a sort obnoxious and obliged to God in *conscience* to do somewhat for the church, to render the patrimony thereof a *competency* ; and no one offers such competent and speedy promise of effecting this, as the redemption of impropriate tithes, and reannexing them to the parochial cures†.”

* Was the patronage of many small vicarages, (now of little consequence) in the present disposal of the Lord Chancellor and the colleges of our two universities, or a reciprocal patronage, according to their present value, surrendered to the impropiators, upon condition of their restoring the rectorial tithes,—it would probably, in many instances, give effect to this purpose.

However, it must not be forgotten, that tithes, both from religion and rational law, could never be vested in lay-hands or devoted to secular purposes. They are connected only with the cure of souls : but, having been surreptitiously alienated by a despotic monarch, the justice of the country stand pledged for their restoration to their former rightful claimants.

† Bacon's Resuscitatio.

It

It has been the endeavour of the author of this work to delineate an expedient, or plan of ways and means, to provide and secure a better maintenance for the ecclesiastical establishment: should his proposals be deemed inadequate to remedy the grievances deplored, he will yet feel himself happy if, in stating the hardships sustained by an order of men to whom he has the honor to belong, and such remedies as occurred to him, he may be an humble instrument to rouse into action some more successful genius, some one more equal to the undertaking,—an undertaking which unites duty with gratification, and is capable of reflecting upon him the most honorable distinction. What is here produced is the effect of conviction, not only of the truth and rectitude of what he advances, but that it is at all times a man's duty to exert himself in mitigating the sufferings of others, and in promoting the pure principle of heaven-born justice;—that, in the present instance, this duty acquires, not only from gradual accumulation, but from the sudden approach of extraordinary outrage, such peculiar coercion upon a mind knowing it and desirous of performing it, as renders silence criminal, and raises public protest into an obligation indispensable!!!

The author's
motive.

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